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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under articles 16 and 17 of the Covenant

Addendum

PERU*

[22 August 1995]

CONTENTS

	Paragraphs	Page
Article 1	1 - 17	3
Article 2	18 - 28	5
Article 3	29 - 113	9
Article 4	114 - 122	26
Article 5	123 - 173	27

* The initial report submitted by the Government of Peru concerning rights covered by articles 6 to 9 (E/1984/6/Add.5) was considered by the Sessional Working Group of Governmental Experts at its 1984 session (E/1984/WG.1/SR.11 and 18).

CONTENTS (continued)

	Paragraphs	Page
Article 6	174 - 200	39
Article 7	201 - 210	44
Article 8	211 - 256	45
Article 9	257 - 335	51
Article 10	336 - 351	63
Article 11	352 - 382	66
Article 12	383 - 415	69
Article 13	416 - 438	74
Article 14	439 - 451	79
Article 15	452 - 521	81

Article 1

1. The first paragraph of article 1 sets forth the right of all peoples to self-determination. By virtue of that right, any nation is able to decide freely on its political and economic condition or regime and hence establish a form of government suitable for the purposes in view.

2. Accordingly, Peru adopted the republican system as its form of government, embodying it in the 1979 Constitution, which stated that Peru was a democratic and social, independent and sovereign republic based on work, with a unitary, representative and decentralized Government (art. 79).

3. The new Constitution, approved by the Democratic Constituent Congress and ratified in a referendum by the Peruvian people, was promulgated on 29 December 1993 and came into force on 31 December 1993. This maintains the same concept, i.e. that the Republic of Peru is democratic, social, independent and sovereign. It likewise establishes that the State is one and indivisible and that its Government is unitary, representative and decentralized, and based on the principle of the separation of powers (art. 43).

4. The 1993 Constitution divides in its text matters relating to the State, the Government and the political system. Thus, the republican, democratic, social, independent and sovereign system is maintained, i.e. the country is governed by a representative body elected by the citizens and its Government adheres to the principle of decentralization, eschewing centralization of power in one geographical site. Lastly, Peru adheres to the form of government adopted by all the world's democratic systems, the Executive, the Legislature and the Judiciary being separate and each fully independent of the others.

5. All these considerations allow Peru to establish freely and in a sovereign manner the characteristics of its life as a nation. This leads us to point out the ways in which it expresses its self-determination.

6. Thus, as regards its system of government, Peru enjoys acceptance by and participation in the international community, with representation in such international organizations as the United Nations and the Organization of American States.

7. The right of peoples to self-determination is an essential condition for the enjoyment of all fundamental human rights. By virtue of this right, all peoples can establish their political status and likewise provide for their economic, social and cultural development.

8. Peru has an extremely heterogenous, multicultural and multilingual character, manifested in the coexistence of 72 ethnic groups or peoples with their own culture and language. Of these, 7 are located in the Andean region and 65 in the Amazonian region, forming 14 different linguistic families and variously described as indigenous, tribal or aboriginal peoples.

9. Aware of the universal movement for the defence of the human rights of ethnic minorities, the State has promulgated a number of legal provisions for a multisectoral approach to the indigenous population in Peru.

10. The Peruvian Constitution of 1993 states as follows:

> "Article 2, paragraph 19. Everyone has the right to ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the nation. Every Peruvian has the right to use his own language before any official through an interpreter. Foreigners have the same right when summoned to appear before any authority.
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> ...
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> "Article 17. The State guarantees the eradication of illiteracy. Similarly it promotes bilingual and intercultural education, according to the characteristics of each region. It preserves the country's diverse cultural and linguistic manifestations. It promotes national integration.
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> ...
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> "Article 89. The peasant and native communities have a legal existence and are juridical persons. They are autonomous in their organization, in their community work, and in the use and free disposition of their lands, as well as in their economic and administrative management within the framework established by law. The ownership of their lands is imprescriptible, except in case of relinquishment provided for in the previous article. The State respects the cultural identity of the peasant and native communities.
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> ...
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> "Article 149. The authorities of the communities, with the support of the peasant patrols, may exercise jurisdictional functions within their territories, in accordance with customary law, provided that they do not violate the fundamental rights of the person. The law establishes the forms of coordination of this special jurisdiction with the justices of the peace and other judicial institutions."

11. As part of the strategy of national peacemaking and in view of the threat of violent ideologies which endanger the existence, identity and cultural values of the indigenous peoples, the State has encouraged the organization of a system of peasant patrols. These patrols have thus far served as a nucleus for efforts to reconstruct the social activity of communities devastated by violence. In May 1993, the National Congress of Urban, Rural and Indigenous Patrols put forward a plan whereby the peasant patrols would become part of the system of national defence and of the armed forces reserve. Legislative Decree No. 741 of 12 November 1991 recognized the communities' self-defence committees. In addition, Legislative Decree No. 740 regulates the possession and use of arms and munitions by the peasant patrols.

12. The Environment Code (Legislative Decree No. 613 of 7 September 1990) states, in article 54, that the State recognizes the right of the ancestral peasant and indigenous communities to ownership of the lands which they possess within protected natural areas and in their regions of influence, and promotes the participation of these communities.

13. The Investment Promotion (Agrarian Sector) Act (Legislative Decree No. 653 of 1 August 1991) protects and preserves the peasant and indigenous communities.

14. The General Peasant Communities Act (No. 24,656) of 13 April 1987 governs the peasant community in Peru as an organization with its own customs and practices, forms of ownership and institutions. It is regulated by Supreme Decree No. 008-91-TR of 15 February 1991 and Supreme Decree No. 004-92-TR of 25 February 1992, approving the economic regulations of the above General Act.

15. The Demarcation and Granting of Title (Territory of Peasant Communities) Act (No. 24,657) of 13 April 1987 has also been promulgated.

16. At the same time, the disappearance of the special agrarian tribunals with the passage of the new Organization of Justice Act in 1990 will make it possible to consolidate single State jurisdiction through new mechanisms for the settlement of agrarian and community disputes.

17. The peasant and indigenous communities as a whole are composed of peoples who maintain their ancestral customs, culture, language and ethnic character, which distinguish them from the rest of the country. In this regard, when the Government of Peru ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in December 1993, at the same time as the United Nations proclaimed the International Year for the World's Indigenous People, it committed itself to adopting specific measures to guarantee for indigenous and tribal peoples the effective enjoyment of human rights and fundamental freedoms, without hindrance or discrimination, and to doing everything possible to improve the living conditions, participation and development of the indigenous peoples while respecting the values and social, cultural, religious and spiritual practices of the indigenous communities of the Andean and Amazonian regions.

Article 2

18. The present Government of Peru has entered into many international conventions and agreements with various States on technical and economic cooperation, these measures being taken in harmony with the provisions of article 2, paragraph 1, of the Covenant. The various agreements signed during the term of the present Government are detailed below:

(i) Agreement between the Ministry of Energy and Mines of the Republic of Peru and the Geological Survey of the United States Department of the Interior relating to scientific and technical cooperation in the cartographic sciences, signed at Lima on 19 July 1990 and entering into force on the same date; the term of this Agreement is indefinite;

(ii) Cooperation agreement between the Republic of Peru and the Federal Republic of Germany on the dissemination of pumping technologies in the department of Piura and other departments, signed by exchange of notes between the Ministry of Foreign Affairs of Peru and the Embassy of the Federal Republic of Germany; entered into force on 4 February 1991;

(iii) Agreement on non-reimbursable economic and financial cooperation for the acquisition of goods, equipment and spare parts, between the Republic of Peru and Japan; signed at Lima by exchange of notes between the Minister for Foreign Affairs and the Ambassador of Japan in Peru, on 8 March 1991, entering into force on the same date;

(iv) Framework Agreement on Economic, Industrial, Scientific, Technological, Technical and Cultural Cooperation between the Republic of Peru and the Italian Republic; signed in Rome on 25 October 1991. Entered into force on 15 August 1994; valid for five years and tacitly renewable unless expressly terminated with at least six months' notice;

(v) Agreement between the Government of the Republic of Peru and the Government of Malaysia on economic, scientific and technical cooperation, signed at Kuala Lumpur on 13 November 1991 and valid indefinitely;

(vi) Agreement amending the final part of the Convention on Economic, Scientific and Technical Cooperation between the Kingdom of Morocco and the Republic of Peru, signed on 14 June 1991 by exchange of notes and entering into force on 2 December 1991;

(vii) Agreement replacing the National Planning Institute by the Executive Secretariat for International Technical Cooperation of the Ministry of the Presidency as executing agency of the Agreement for the establishment of a Peru-Canada General Collateral Fund as approved on 8 April 1988; signed by exchange of notes No. P-212 for Canada and No. 6-41/34 for Peru, on 31 July and 4 September 1992 respectively;

(viii) Agreement between Peru and the Government of Japan on Japanese economic cooperation for the proposed repair and completion of educational infrastructure facilities, signed by exchange of notes No. 0-1A/324/92 of the Embassy of Peru and RE (DGAB) No. 6-18/262 of the Ministry of Foreign Affairs of Peru of 24 November;

(ix) Agreement on a loan for the Financial Sector Adjustment Programme between the Japan Overseas Economic Cooperation Foundation and the Republic of Peru, signed on 22 December 1992;

(x) Supplementary agreement on scientific and technological cooperation between the National Council for Science and Technology of Ecuador

and the National Council for Science and Technology of Peru, signed at Quito on 17 June 1993; valid for five years and automatically renewable;

(xi) Framework Agreement on Financial Cooperation between the Republic of Peru and the European Investment Bank (EIB). Signed on 2 October 1994. Approved by the Government of Peru through Legislative Decision No. 26,462 of 24 May 1995. In force since 6 June 1995, the date on which the instrument approving it was published.

19. The agreements on technical and economic cooperation entered into by Peru during the term of this Government are as follows:

(i) Agreement on Economic, Scientific and Technical Cooperation between the Republic of Peru and the Kingdom of Morocco, signed on 14 June 1991 for a term of five years and tacitly renewable for similar periods;

(ii) Basic Agreement on Technical, Scientific and Financial Cooperation between Peru, Italy and the Italian-Latin American Institute for the implementation of the pilot plan for the utilization of non-conventional sources of energy and the development of the local technologies necessary for building mini or micro hydroelectric power plants; signed in Rome on 25 October 1991 and entering into force on the same date;

(iii) Agreement between the Republic of Peru and UNICEF on the Peru-UNICEF Programme of Cooperation 1992-1996 (Plan of Operations), signed in Lima on 12 November 1992;

(iv) Agreement between the Government of the Swiss Confederation and the Republic of Peru relating to the cancellation of debts arising from the financial cooperation loans granted in 1976 and 1983, signed in Lima on 11 February 1993;

(v) Agreement between the Government of the Republic of Peru and the Government of the Federal Republic of Germany on financial cooperation: structural adjustment plan for the economy, signed in Lima on 3 December 1993;

(vi) Agreement on Non-reimbursable Technical Cooperation with the Inter-American Development Bank (IDB) (Administration of the Japanese Special Fund) for the programme for the institutional development of the Peruvian Legislature, signed in Lima on 22 December 1993;

(vii) Agreement on Non-reimbursable Technical Cooperation with the Inter-American Development Bank (IDB) for the basic sanitation support project, signed on 22 December 1993 and entering into force on the same date;

(viii) Agreement on Technical and Scientific Cooperation between Peru and Chile for the development of the Andean communities and the protection of South American domestic camelidae, signed in Lima on 7 March 1994 and entering into force through note No. 008450 of 2 February 1995. The Chilean Ministry of Foreign Affairs has informed our embassy that the instrument of ratification was deposited on 15 March 1995;

(ix) Agreement between the Republic of Peru and the Federal Republic of Germany on Financial Cooperation (water supply and sewerage projects), signed in Lima on 11 April 1994 and entering into force on the same date;

(x) Agreement on economic and commercial cooperation between the Government of the Republic of Peru and the Government of Romania, signed on 16 May 1994. Will enter into force when the parties meet the requirements of article 16 of the Agreement;

(xi) Agreement on technical cooperation for the development of scientific, technical, welfare and health-care activities in the Peruvian-Colombian frontier zone, signed in Lima on 12 July 1994; will enter into force when the provisions of article 13 have been satisfied.

20. With regard to the exercise of the rights contained in the Covenant, the Peruvian Constitution establishes in article 2, paragraph 2, that every person has the right to equality before the law and hence no one may be discriminated against on account of origin, race, sex, language, religion, opinion, economic status or any other ground.

21. Concerning the treatment of foreigners, the Constitution states that the above-mentioned article is also applicable to non-nationals. In this regard, Legislative Decree No. 703 (Aliens Act), promulgated on 5 November 1991 and published on 14 November 1991, states that any foreigner, that is, any citizen who does not possess Peruvian nationality, has the same rights and obligations as Peruvians, with the exceptions established by the Constitution and other legal provisions of the Republic.

22. In the field of employment, the right to work of foreigners is protected by the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Employment of Foreign Workers Act and Legislative Decree No. 689 (Employment of Foreign Workers Act), promulgated on 4 November 1991 and published on 5 November 1991. Article 1 of the latter instrument permits the employment of foreign workers, subject to the labour regulations governing private business and the limits established by law. The contract of employment and amendments thereto must be authorized by the Labour Administration.

23. The present legislation on the employment of foreign workers strikes a proper balance between the need of the State to provide sufficient jobs for its citizens and its interest in enabling them to benefit from information and know-how that are non-existent in Peru.

24. The legal framework relating to foreigners encourages their presence in the labour market, since the present legislation has raised the limits for the number of foreign workers and their remuneration and established a quicker and more efficient procedure for the approval of contracts of employment for foreigners. Furthermore, a foreign worker has the same rights as a Peruvian worker in regard to systems of compensation for time worked, holidays, bonuses and other benefits. However, there are some limitations on the employment of foreign personnel relating, inter alia, to the total percentage of workers in a given undertaking and to the amount of remuneration, which must not exceed a certain percentage of the total remuneration of all workers in the undertaking.

25. With regard to holidays, bonuses, compensation for time worked and other benefits, a foreign worker has the same rights as a Peruvian worker.

26. Legislative Decree No. 662, "Act according a stable legal status to foreign investment, through the recognition of certain guarantees", promulgated on 29 August 1991 and published on 2 September of the same year, accords a stable legal status to foreign investment. Article 1 requires the State to promote and guarantee foreign investments already made or to be made in Peru, in all sectors of economic activity and in all forms of entrepreneurship or contractual relations permitted by the national legislation.

27. This Act stipulates that foreign investors and the firms in which they participate have the same rights and obligations as Peruvians, with no exceptions other than those established by the Peruvian Constitution and the Decree in question. Furthermore, article 2 of the Decree prohibits discrimination among investors or firms on the basis of Peruvian or foreign participation in the investments concerned.

28. In summary, Peruvian legislation contains instruments which protect the rights of non-nationals, inter alia:

(a) The Constitution, article 63 of which stipulates that national and foreign investment are subject to the same conditions;

(b) Legislative Decree No. 703 (Aliens Act), under which foreigners have the same rights and obligations as Peruvians, with the exceptions established by the Constitution and other legal provisions;

(c) Legislative Decree No. 662, which accords a stable legal status to foreign investment. As required by article 1 of the Decree, the State promotes and guarantees foreign investments already made or to be made in Peru, in all sectors of economic activity and in all forms of entrepreneurship or contractual relations permitted by national legislation.

Article 3

29. The purpose of this article is to protect women against discriminatory treatment. Women must enjoy and exercise their rights on equal terms with men.

30. This principle has been abundantly reflected in Peruvian legislation. In the constitutional sphere, we should note that the 1993 Constitution recognizes the right of every person to equality before the law. It states that no one may be discriminated against on account of origin, race, sex, language, religion, opinion, economic status or any other ground (art. 2, para. 2).

31. Article 4 of the Constitution lays down that the community and the State shall afford special protection to children, adolescents, mothers and older people left on their own, while article 23 states that work in its various forms shall be the subject of priority attention from the State, which shall give special protection to mothers, minors and people unfit to work.

32. In the labour field, article 26, paragraph 1, of the Constitution recognizes the principle of equality of opportunity without discrimination.

33. In civil law, there has been an important development concerning the treatment of women. The Civil Code of 1984 eliminated every vestige of discrimination contained in the 1936 Code. Among these changes, mention should be made of:

> "Article 4. Males and females shall have equal capacity to enjoy and exercise civil rights.
>
> ...
>
> "Article 24. Women shall have the right to bear their husband's name added to their own and to keep it as long as they do not contract a new marriage. This right shall not apply in case of divorce or nullity. In a case of physical separation the woman shall preserve her right to bear the name of her husband. In cases of dispute the courts shall decide.
>
> ...
>
> "Article 287. Spouses shall mutually undertake, by the fact of their marriage, to feed and educate their children.
>
> ...
>
> "Article 290. Both spouses shall have the duty and right to participate in the running of the home and to cooperate in improving it. It is the duty of both of them also to establish and change the conjugal home and to resolve questions related to the economics of the home.
>
> "Article 291, paragraph 1. If one of the spouses devotes himself or herself exclusively to work in the home and the care of the children, the obligation to maintain the family shall lie with the other, without prejudice to the mutual aid and cooperation that the two spouses owe each other.
>
> "Article 292. The conjugal partnership is legally represented by both spouses jointly. Either can hand over authority to the other to represent the partnership totally or partly. For the ordinary

necessities of the home and for acts of administration and preservation, the conjugal partnership may be represented by either of the spouses.

...

"Article 303. Each spouse is free to manage his or her own assets and may dispose of them or place a lien on them.

...

"Article 305. If one of the spouses does not contribute with the fruits or revenue of his or her own assets to the upkeep of the home, the other can require that they pass under his or her management wholly or in part.

...

"Article 313. Management of their joint assets is a matter for both spouses. Either may authorize the other to take over sole management of all or some of the assets.

...

"Article 315. The intervention of the husband and wife is essential for disposal of or taking a lien against the joint assets. It is not required in cases of acquisition of movable assets, which may be effected by one of the spouses acting alone."

34. On the other hand, it should be emphasized that the 1984 Civil Code introduced an important modification relating to the equality of men and women in regard to both what is known as arbitration at law and so-called "arbitration of equity".

35. In this connection, reference should be made to the second paragraph of article 551 of the Code of Civil Procedure, which established that arbitrators must be appointed from among Peruvian or foreign males over 25 years of age in full exercise of their civil rights and who, in addition, must be professionally qualified if they have not been expressly designated as arbitrators of equity.

36. Article 1,916 of the 1984 Civil Code stipulated that friendly arrangers could be appointed from among Peruvian or foreign natural persons over 25 years of age who are in full exercise of their civil rights. In this way the Civil Code, in harmony with the provisions of article 2, paragraph 2, of the 1979 Peruvian Constitution, removed the obstacle which had without justification made it impossible for women to act as arbitrators.

37. Article 1,916 mentioned above was repealed when the General Arbitration Act (No. 25935) came into force; article 20 of the Act reiterated the removal of the obstacle mentioned above. Indeed, this instrument establishes, in its first paragraph, that natural persons, whether Peruvian or foreigners, may act as arbitrators if they have reached their majority, possess full legal

competence and are in full exercise of their civil rights. Consequently, in this concrete respect the principle of equality of the sexes is maintained for the appointment of arbitrators.

38. As far as civil procedural legislation is concerned, it should be noted that the Code of Civil Procedure which was in force up to 27 July 1993 contained various discriminatory rules against women in relation to their appearance in a judicial proceeding.

39. Thus, it was for the husband to represent the wife in legal proceedings, except in the cases laid down by law (art. 20). A married woman could appear before the court without need of the husband's intervention or of judicial authorization only if she was divorced, if the husband was the person with whom she was litigating, if the matter under discussion referred to actions or obligations arising from the industry or profession exercised publicly by the woman or to activities arising from the management by the wife of her paraphernal property or if the wife was before the court for eviction or payment of the rent on the building she occupied when the husband was absent (art. 22). Except in the cases referred to, the wife needed the husband's authorization to appear before the courts or, in his absence, authorization from a judge (art. 23).

40. These rules, like the whole of the Code of Civil Procedure, were repealed on the entry into force of the new Code of Civil Procedure. This Code has established that the married couple may be represented by either of the spouses if they are the plaintiffs. On the other hand, if they are the respondents, both spouses must be represented. This is established by article 65 of the Code, relating to the procedural representation of autonomous assets.

41. Bearing in mind that the Civil Code establishes in article 303 that each spouse is free to manage his or her own assets and may dispose of them or place a lien on them, procedural steps related to such assets will be initiated by the spouse who owns them.

42. An important area is that connected with commercial legislation, in regard to which it should be pointed out that paragraph 2 of the first invalidating provision of the Code of Civil Procedure that came into force on 28 July 1993 annulled articles 6, 7, 8, 9, 10, 11, 12 and 21, paragraphs 7, 8 and 9, of the Commercial Code.

43. All those articles laid down restrictions on the practice of commerce by a married woman. Thus, for example, a married woman over 16 years of age could engage in commerce, provided that she had the permission of her husband, acknowledged in a certified public instrument and registered in the Incorporation Register (art. 6), notwithstanding the fact that it was presumed that the married woman engaged in commerce was authorized to trade (art. 7).

44. The husband could freely revoke the authority given (art. 8). In the case of a woman who at the time of marriage was engaged in commerce and wished to continue, she had to have the authorization of her husband (art. 9). All

the wife's property and the joint property of the married couple were under obligation in regard to the results of her management of her business (art. 10).

45. A married woman over 21 years of age living separately from her husband as a result of the granting of a divorce, or whose husband was under curatorship or absent and his whereabouts was not known, or who had been deprived of his civil rights could also engage in commercial activities (art. 11). In such cases the proceeds of trading were under obligation only as regards the woman's own property, or the property of the married couple that had been acquired with the same proceeds, the woman being able to alienate them or borrow against them (art. 12).

46. Finally, the registration form of each trader or partnership had to show the husband's authorization of the exercise of commerce by his wife, the legal or judicial permission to administer her property by reason of the absence or legal incapacity of the husband, revocation of the authorization to trade and the dowry papers, marriage settlements and titles of ownership of the paraphernal property of the wives of the traders.

47. It is important to emphasize that a declaration was made expressly to repeal the articles referred to since, although they should have been considered tacitly annulled since the entry into force of the 1979 Constitution, which established equality between men and women, the texts of the above-cited rules had continued to be reproduced as if they were still in force, which from a formal point of view was not certain.

48. Thus, the clear intent to establish equality between the sexes in the legislation concerned with commercial arrangements was established by publicly putting on record the annulment of provisions that had wrongfully embodied discrimination.

49. It is important now to refer to the penal legislation, an area in which the most important change is a new Penal Code which, compared with its predecessor, the 1924 Penal Code, tends towards decriminalization. Its provisions put to one side the punitive aspect of sentences and lay emphasis, like other modern enactments, on rehabilitation.

50. Within this framework of a modern penal policy, women indubitably have greater protection. Moreover, the disadvantage at which women have found themselves is gradually disappearing because more and more account is being taken of reality as the point of departure for every investigation made with a view to producing legal provisions with a penal content. It must be emphasized, however, that it is not a question of there having been no concern with reality before; what is happening is that the prominence given to the role of women in the last few years has meant that legal provisions have become more diligently drafted and more in accordance with the real conditions which they are supposed to regulate and apply to.

51. A clear example of the statement in the previous paragraph is the fact that in article 107 of the Penal Code the unmarried male partner is considered as a passive subject of the crime of uxoricide. Without doubt, what is remarkable is that this explicit mention arises from direct observation of

what is happening in an environment such as ours, which is like that found in many Spanish American countries, where cohabitation without marriage is increasingly frequent. The above provision was, not of course, to be found in the 1924 Penal Code.

52. Another commendable aspect of this Code - and one directly connected with participation of women - is that the harsh penalties often applied without sufficient justification have been replaced by the performance of community service. This marks a significant step forward in the resocializing purpose of penalties. Clearly, account must be taken here of the presence of a considerable number of women in Peruvian prisons.

53. There is also protection for women in the case of abortion without consent. Here the Legislature has stipulated that if the woman concerned should die and the person performing the abortion could have foreseen that outcome, he or she will be punished with greater severity.

54. The Peruvian Penal Code has laid down penalties for desertion of pregnant women. Procuring is liable to greater penalties if the active and passive subjects of the offence are related, (there have been some cases in which husbands have exploited the immoral earnings received by their wives through the exercise of prostitution).

55. As can be seen, progress has been qualitative. This new Code has opened the door to ever more effective protection of women under completely different arrangements from those that underlay the Penal Code that has been repealed, the principle being to ensure that the rehabilitating purpose of the penalties becomes less and less an ideal and more and more a reality.

56. Below a commentary is given on the main provisions of the Penal Code relating to the legal position of women in Peru:

> Article 107. A person who deliberately kills an ascendant relative or descendant, whether natural or adoptive, or his spouse or cohabitee shall incur a penalty of imprisonment for not less than 15 years. This article regulates what is known generically as the offence of parricide. This includes the concept of uxoricide, i.e. a case in which the woman specifically takes part as an active subject of the offence or its passive subject. If it is a case of a woman killing her husband or cohabitee, the penalty will be harsher because it is considered that such actions create greater risk; in addition to destroying the life of the passive subject, they violate the elementary feeling of respect for close relatives.
>
> Article 110. A mother who kills her child at birth or under the influence of the puerperal condition shall be liable to imprisonment of not less than 1 year or more than 4 years, or to the performance of 52 to 104 days' community service. The offence is denominated as infanticide, the characteristic feature in this case being the fact that the mother can only be the active subject of the offence. In practice, how to deal with it is a matter of dispute since the article penalizes precisely an agent who, because of special circumstances, is in a state of some imbalance, which for some makes punishment out of the question.

Infanticide amounts to mitigated homicide because of the very special circumstances that lead to its characterization. The mother must have intentionally killed her child when it is being or has just been born. This is not simply a culpable wrong.

Article 114. A woman who causes herself to abort, or realizes that someone else is practising abortion, shall be sentenced to imprisonment of not more than 2 years or the performance of community service for 52 to 104 days. This is a question of self-abortion. As will be seen, the pregnant woman is the only agent. Two cases are evoked: (a) the woman causes herself to abort, in which case she is punished for causing her own abortion by any means; and (b) the woman consents to the abortion being carried out by a third person.

Article 115. A person who causes an abortion with the consent of a pregnant woman is punishable by imprisonment of not less than 1 year and not more than 4 years. If the death of the woman supervenes and the person performing the abortion could have foreseen that outcome, the sentence shall not be less than 2 or more than 5 years. This is the case of what is known as abortion with consent. Here the person is punished who practises the abortion with the consent of the pregnant woman, unlike article 114, under which the woman who gives her consent is punished. It is important to point out that consent must have been given by a free woman with legal capacity and such consent does not exculpate the active subject. The punishment is greater if the woman dies.

Article 116. A person who causes a woman to abort without her consent is punishable by imprisonment of not less than 3 or more than 5 years. If the death of the woman supervenes and the person performing the abortion could have foreseen that outcome, the sentence shall not be less than 5 or more than 10 years. In this article the punishment is given for an offence known as abortion without consent. The essential point in this case is the lack of consent on the part of the pregnant woman. Two situations arise here: (a) the woman is not aware of the intentions of the person performing the abortion, who makes use of this or of her naiveté to make her abort; and (b) physical violence is employed against her in order to carry out the abortion. Once again the death of the woman constitutes an aggravating factor.

Article 119. Abortion carried out by a doctor with the consent of the pregnant woman or of her legal representative, shall not be punishable if it was practised as the only way of saving the life of the pregnant woman or avoiding serious and permanent damage to her health. It is considered to be a therapeutic abortion. Curiously, the Code in this article does not lay down penalties. This is because of the raison d'être of this provision in which the mother takes a fundamental part. Indeed, it is the mother who will decide finally between safeguarding her life and her desire to confront all the risks inherent in a dangerous pregnancy. This means that the doctor who practises the abortion where there is no other means of saving the mother's life or avoiding serious or permanent damage to her health will not be penalized.

Article 144. A woman who feigns pregnancy or childbirth to give to a supposed child rights that do not belong to it is punishable by imprisonment of not less than one or more than five years. The same period of imprisonment and, in addition, a ban on practising for between one and three years under article 36, paragraph 4, will apply to a doctor or midwife who cooperates in the commission of the offence. It is the offence of feigning pregnancy or childbirth that is in question here. Undoubtedly, it is a wilful wrong, i.e. committed intentionally by a woman who is the active subject. This offence involves the simulation of a pregnancy or childbirth. In this last case, it is necessary that the child should really exist; otherwise this provision will not apply. One very pathetic case is that of the widow who deliberately claims an inheritance from her dead spouse through a suppositious child; another is the case of a woman who seeks by every means to bring a man under her influence by making him believe that the child born was his.

Article 150. A person who deserts a pregnant woman or a woman who has been pregnant and who is in a critical situation is punishable by imprisonment of not less than six months or more than four years and by 60 to 90 days' fine. The crime is desertion of a pregnant woman. Here a single or married woman and the embryo or foetus are the passive subjects of the offence. The essential point to emphasize is that the protection given by the law is based on assistance that is owing to a woman who has been pregnant and deserted in a critical situation which imperils her safety and the safety of the infant she is carrying in her womb.

Article 179, paragraph 4. A person who promotes or fosters prostitution of another person is punishable by imprisonment for not less than 2 or more than 5 years. The period shall be not less than 4 or more than 12 years if: (para. 4) the perpetrator of the offence is related within the fourth degree of consanguinity or the second degree of affinity or is the spouse, cohabitee, adopter, tutor or curator or has the victim in his or her care for any reason. The offence is procuring. Here the purpose of the procurer (who may be male or female) is to promote prostitution of another person and thereby satisfy the sexual desires of others. In the case in question, (para. 4), the fact of being the spouse of the victim is an aggravating circumstance.

Article 180. A person who exploits the immoral earnings of a person practising prostitution is punishable by imprisonment for not less than 3 or more than 8 years. If the victim is under 14 years of age or the spouse, cohabitee, descendant, adoptive child or child of the spouse or cohabitee, or in his or her care, the punishment shall be not less than 4 and not more than 12 years. The offence is known as pimping. It occurs in this case that the earnings a woman obtains through the exercise of prostitution are taken over by a person known as a pimp and living parasitically on such earnings. In quite a few cases pimps are husbands who take advantage of and exploit the practice of prostitution by their wives.

Article 181, paragraph 3. Anyone who imperils, seduces or abducts a person to deliver to another for the purpose of engaging in sexual relations or a person who hands that person over for that purpose is

punishable by imprisonment for not less than 2 and not more than 5 years. The penalty shall be not less than 5 years or more than 12 years when (para. 3) the victim is the spouse, cohabitee, descendant, adoptive child, spouse's child or cohabitee's child, or in the offender's care. This article refers to the prostitution of persons. A woman may be the active or passive subject of the offence. Paragraph 3 presupposes that the victim is a woman in the case in question and increases the penalty for the person concerned if the two are related.

Article 182. A person who promotes or facilitates the entry into or departure from the country or transfer within Peru of another person for the practice of prostitution shall be liable to imprisonment for not less than 5 or more than 10 years. The penalty shall be not less than 8 or more than 12 years if any of the aggravating circumstances listed in the previous article is present. The offence here is known as traffic in persons. The woman in this case can be the object of the traffic and the purpose is to protect her with or without her consent, accusing whoever facilitates her entry, departure or transfer within Peru to practise prostitution, the penalty being greater if the victim is related to the person carrying out this act of white slavery.

Article 208, paragraph 1. There shall be no punishment, without prejudice to civil compensation, for thefts, misappropriations, frauds and damage caused by: (para. 1) spouses, cohabitees, descendants and ascendants and direct relatives. This is another provision that does not indicate the offence committed but, on the contrary, lays down grounds for absolving the person committing it. A woman who commits theft, misappropriation, fraud or damage against her spouse is not punishable by imprisonment but may be liable to pay civil compensation where the case arises. The penal law, therefore, does not wish to apply the severity involved in penal sanctions to a wife so as not to create a greater stigma that would cause still further deterioration in family relationships.

Article 442. Anybody who deliberately ill-treats another person without causing injury is punishable by performance of community service for 10 to 20 days. If the person concerned is a spouse or cohabitee, the penalty shall be community service for 20 to 30 days, or 30 to 60 days' fine. This is a case of ill-treatment without injury. Here a woman who ill-treats her spouse or cohabiting partner but without causing any injury will be punished not for having committed an offence, but for infringing the rights of the person. For this same reason, the penalty is community service or 30 to 60 days' fine.

57. In the field of administrative legislation, mention may be made in the first place, of the existence of Supreme Decision No. 183-94-PCM, approving the statutory regulations issued for the Budgetary Programme for Targeting Basic Social Expenditure.

58. The purpose of this programme is to promote equality of opportunity for all the inhabitants of the country, giving priority to selective and targeted intervention in support of the sectors most in need and improving the quality of coverage and efficiency in basic social expenditure. Expenditure of a

social nature is considered to be expenditure for providing basic preventive health services, primary and secondary education and basic and supplementary justice.

59. In order to put into effect the provisions of the regulations, a sectoral affairs coordination unit has been set up, consisting of representatives of the Ministry of Health, the Ministry of Education and the Ministry of Justice and will co-ordinate and issue directives for the conduct of the programme. Therefore, execution of the programme, to the extent that it can improve coordination for the treatment and protection of women in certain situations connected with health, such as with the protection of pregnant women or the development of breast-feeding programmes, is of special importance and must be considered as an example of the treatment which is now being given to women, not only in the legislative and political fields but also in the field of application and effective development of programmes for women.

60. In addition, it should be mentioned that at the moment a bill (No. 1849-94) is being discussed by the Commission on Human Rights, Defence and Internal Order of the Democratic Constituent Congress. The bill is intended to repeal Supreme Decrees Nos. 010-93-IN and 002-94-IN.

61. The first Supreme Decree leaves in suspense the situation of auxiliary personnel and civilian health employees of the Peruvian National Police and repeals various legal provisions, among them one that incorporated officials and auxiliaries in the civilian health staff of the National Peruvian Police and another which assigned the rank of acting lieutenant and other prerogatives to persons graduating from public health training schools of the Peruvian National Police (SPNP) (treating them as public servants).

62. The second Supreme Decree lays down provisions for the appointment of nursing and clinical laboratory professionals graduating from the professional training centre of the SPNP, for which purpose it authorizes the national police to designate these nursing and clinical laboratory staff as civilian employees under the same conditions as health professionals.

63. These regulations basically affect female staff: nursing professionals and clinical laboratory technicians. Both decrees, it is thought, are in breach of the constitutional principle of non-discrimination on grounds of sex by depriving of police status the female health staff of the police forces and depriving them of advancement, honours, remuneration and pensions that are provided for the rest of the staff. By virtue of this it can be anticipated that no major objections will be raised in the proceedings and that it is highly probable that the Supreme Decrees referred to will be repealed as discriminating against women.

64. Furthermore, in the field of administrative legislation no additional provisions have been found that would establish discrimination either favourable or unfavourable to women.

65. A first general observation related to legal provisions applicable to the whole of administrative proceedings concerns the Act on General Standards of Administrative Procedure, in which there is no reference at all to the sex of the users or citizens who engage in an administrative procedure. The

formulation of the articles in this case is totally neutral and it should obviously be understood that it derives from the consideration that they apply to both men and women.

66. It should also be noted that this is based on the consideration that in respect of the whole of administrative legislation there are countless provisions of varying importance, among them the unified texts of administrative procedures (TUPAS) (provided for in Legislative Decree No. 757, Act on the Promotion of Private Investment), which contain or are intended to contain all the administrative procedures to be followed before the State body concerned.

67. This large number of provisions obviously makes it materially difficult to carry out a total analysis of the whole set of administrative regulations. Suffice it to mention that, before the promulgation of Legislative Decree No. 757, special studies had been carried out that brought to light and referred to the existence of approximately 80,000 administrative procedures contained in an equal number of regulations of various ranks. This imposes great limitations on pinpointing regulations, despite which a review of representative texts has not revealed a single text referring to women other than those previously mentioned.

68. With regard to the right to work, the Peruvian Constitution establishes, in article 22, that "work is a duty and a right. It is the basis of social well-being and a means of personal fulfilment". In Peru today there is no difference in treatment under the Constitution and in labour legislation; both women and men have the right to work in accordance with their abilities.

69. Since the promulgation of Act No. 2,851 relating to the "work of children and women for a third party", legislation has been enacted to improve the situation of women, thus providing them with certain benefits.

70. Women may not work more than 8 hours a day or 45 hours a week (Act No. 2,851, art. 5), the normal working week for men being 48 hours. During the working day there must be two continuous hours of rest at mid-day. If a woman has to work on Saturday afternoons, her working day may not exceed five hours and she will take the Monday off instead, if it is not already a public holiday. For these purposes, the daily wage will be equal to the ordinary day's wage (Act No. 2,851, art. 11, as amended by the single article of Act No. 4,239).

71. As regards maternal welfare, article 23 of the present Constitution stipulates that the State shall afford special protection for mothers.

72. Women who are pregnant are entitled to 90 days' leave, 45 days before the birth and 45 days after it, which, as an exception, will be reckoned as actual days' work and hence cannot be deducted from length of service. Mothers are also entitled to a break of one hour a day for breast-feeding during the first year of the child's life.

73. An additional benefit is that of the crèche room, as provided for in articles 20 and 21 of Act No. 2,851. Mothers who place their children in such crèches are allowed breaks totalling not more than one hour a day in order to feed them.

74. Concerning social security, Act No. 24,705, which was promulgated on 16 July 1987, includes housewives and mothers in the social security system, subject to the payment of monthly contributions of 5 per cent of the minimum wage.

75. Under Decree-Law No. 22,482, a woman employee or worker will receive the benefits conferred by this Act as a compulsorily insured person. These benefits are the maternity and breast-feeding allowances, which are payable in cash. They will be granted provided that the insured women has made at least three consecutive monthly contributions or four non-consecutive monthly contributions in the course of the six months preceding the probable date of birth and was registered with the Peruvian Social Security Institute (IPSS) nine months before the probable date of birth.

76. The right of the mother to apply for cash payments of both maternity benefit and breast-feeding benefit lapses six months after the final date at which the benefit is payable for each grant, 90 days in the case of the maternity benefit and when the baby is 8 months old in the case of the breast-feeding grant (Decree-Law No. 22,482, art. 40).

77. With regard to retirement, Decree-Law No. 19,990, regulating the national pension system in Peru, establishes the right of women to retire on reaching the age of 55, while men have the right to retire when they reach 60.

78. Decree-Law No. 20,530, concerning the regulations for pensions and compensation for civilian services to the State not covered by Decree-Law No. 19,990, stipulates that a female worker becomes entitled to a pension on completing 12½ years of service.

79. There are a series of prohibitions against women performing certain kinds of work, as defined in Act No. 2,851. Article 6 of this Act provides that female minors (i.e. females under 18 years of age) are forbidden to perform night work (from 8 p.m. to 7 a.m.). Similarly, female minors are not allowed to work on Sundays or public holidays in the following occupations:

(a) Those performed in the family without the collaboration of persons outside the family and under the authority and supervision of parents or guardians;

(b) Domestic service occupations;

(c) Agricultural occupations, if machinery is not used.

It is also forbidden for female minors to work in the following occupations:

(i) Newspaper-selling;

(ii) Selling of magazines and lottery tickets;

(iii) Shoe-shining;

(iv) Distribution of programmes and leaflets;

(v) All other ambulatory occupations exercised in the streets except for those carried on in kiosks and at fixed stalls.

Both article 12 of Act No. 2,851 and the Supreme Decree of 25 June 1921 forbid women to work underground and to perform mining or quarrying work. Under article 12 of the Act, all other occupations which, in the opinion of the government authorities, are hazardous to health and decency must also be included.

80. The following additional benefits and duties may also be mentioned:

(a) Employers are obliged to provide seats necessary for women to work comfortably;

(b) Women who do sewing work at home must receive wages at least equal to those earned per legal working day by employees in workshops. If the work is paid for by the piece, the legal working day must produce the same wages;

(c) There exists a public right of action against persons who infringe Act No. 2,851, which regulates the work of women for third parties. All institutions for the protection of mothers have the authority to take public action;

(d) The law recognizes the situation of domestic workers, who are protected by Supreme Decree No. 23-DT of 30 April 1957. Similarly, under Supreme Decree No. 002-70-TR, they are recognized as having the right to holidays, pay commensurate with the hours they work and a minimum period of rest at night.

(e) The Ministry of Labour and Social Welfare must periodically institute special employment programmes for different categories of labour. Those eligible for such programmes include women with family responsibilities without age-limit. For these purposes, women with family responsibilities are considered to be those who, irrespective of their age and marital status, have family duties and are available to work part time or for set periods;

(f) Women workers and employees subject to the rules governing work in the private sector are entitled to receive a bonus of 25 per cent on completing 25 years of service with the same employer;

(g) Women who are authorized to work nights in hotels, bars and restaurants as waitresses must be provided with a special permit, which will be issued free of charge by the General Labour Inspectorate of the Ministry of Labour;

(h) The State ensures compliance with the provisions relating to women's work by carrying out inspections of workplaces and thus determining whether the law is being faithfully adhered to;

(i) The law confers on housewives and mothers the status of independent workers (Act No. 24,705).

81. It is important to note that the principal characteristics apparent in the development of the situation regarding working women over the past decade in Peru have been:

(a) Women's greater rate of participation in the labour force, which is reflected in the large increase in the economically active female population;

(b) The trend towards a levelling of the occupational structure of women relative to men, particularly in certain occupational groups; and

(c) The greater inequality in income distribution among working women, owing to the different representation of women in various occupational groups.

82. Increased participation of women in economic activity seems to be linked to a rise in their levels of education. Women who train for a career increase their chances of escaping household chores and entering the workplace. This fact is noted in the educational profile of the economically active female population, one third of whom have received a higher education. Most working women are employed in the tertiary sector of the economy; about 67 per cent of the employed economically active female population work in the commercial and service sector since most women are self-employed.

83. The relative improvement in the employment situation of Peruvian women is a result of their growing participation in the workforce.

84. With regard to the right to health, article 7 of the Constitution states that everyone has the right to protection of individual, family and community health, and the duty to help promote and protect that health. We shall deal with various topics associated with this right.

85. Life expectancy: for the period 1990-1995, life expectancy in Peru was 66.6 years for women and 62.7 years for men. There are greater variations within the female population than between the sexes; urban women have a life expectancy seven years longer than that of rural women. The trend towards increased life expectancy at birth is leading to an increase in the proportion of older persons in the population; at present, they account for 5 per cent of Peruvian women, for whom specific, specialized policies and services need to be developed.

86. Maternal mortality: in 1995, Peru had an estimated maternal mortality rate of 261 per 100,000 live births, a figure 19 per cent lower than in 1981, when the rate was 321 deaths per 100,000 live births.

87. Uneducated women have the highest maternal mortality rates. The principal causes of maternal mortality are associated with interruption of unwanted pregnancies and childbirth accompanied by inadequate medical care (haemorrhage, infection or hypertension). According to studies carried out in the marginal sections of the capital (Lima), septic abortions were the primary cause of maternal mortality in 1986 and 1988.

88. Infant and child mortality: during the period 1981 to 1991, the average rate of infant mortality was 64 per 1,000 and the average rate of child mortality 92 per 1,000. Boys have a 15 per cent higher infant mortality rate and an 8 per cent higher child mortality rate than girls. Over the same period, the infant and child mortality rates in rural regions, particularly in the poorest departments, remained high. The infant mortality rate was 90 per 1,000 and the child mortality rate 131 per 1,000.

89. Health in the workplace: in general, major studies on health in the workplace do not include women; as a result, there is a lack of detailed information on the problems that affect women in the workplace.

90. Poverty, limited access to health services, and long and unpredictable hours of work in the informal sector are barriers to health care for working women. Women are at a higher risk because of the nutritional deficiencies, fatigue and tension which result from a lack of support or resources and from their vulnerability to various types of harassment and abuse. Most health services have focused on mothers and children.

91. The following hazards are associated with the types of work in which women predominate:

(a) Self-employed workers and unpaid family workers account for 40.3 per cent and 25.5 per cent of the economically active female population respectively. These categories include women engaged in informal commerce and production. Hazards: they are not protected by labour laws such as those which regulate working hours, wages, social security or occupational health standards.

(b) Rural workers: women account for 50 per cent of the economically active rural population. Hazards: long hours; seasonal work; low wages; inadequate transportation; exposure to micro-organisms, insecticides, noise, variable weather conditions, non-ionizing radiation and vibration; carrying of heavy loads, etc. These factors tend to result in infertility, spontaneous abortion and haemorrhaging.

(c) Office workers: employees account for 13 per cent of the economically active female population. Hazards: need for speed, uncomfortable working conditions, weather problems, toxic substances, electromagnetic radiation, repetitive and boring work, and sexual harassment.

(d) Factory and, in particular, textile workers: they account for 7.4 per cent of the economically active female population. Hazards: noise, vibration, defective machinery, discomfort, speed of work and toxic chemicals.

(e) Domestic workers: they account for 11.2 per cent of the economically active female population in Metropolitan Lima. Hazards: low wages, lack of status, 15 days' annual leave, lack of time for their own affairs.

92. Women account for over 50 per cent of employees in the health-care sector and suffer from lack of job security and low wages. High-risk jobs are those which involve the handling of organic and chemical substances and the danger

of laboratory accidents. Nurses are exposed to communicable diseases and toxic substances, in addition to tension caused by overwork and the responsibility for patient care.

93. Health conditions and services: in 1991, health-care expenditure accounted for 0.31 per cent of the gross domestic product (GDP). That year, the Government created the National Social Compensation and Development Fund (FONCOPES) one of the principal programmes aimed at alleviating extreme poverty. In 1992, this agency allocated 7 per cent of its resources to health programmes, and most of the projects in that area were devoted to the construction of clinics and improvements to and/or expansion of health centres.

94. In 1990, there were 3,328 clinics, one for every 6,000 inhabitants, and 777 health centres; 46 per cent of women in childbirth received health care.

95. In 1990, human resources in the health sector (public and private) included 23,000 doctors, 18,000 nurses and 4,000 obstetricians. Seventy-three per cent of doctors and 55 per cent of nurses are concentrated in Metropolitan Lima.

96. During the period 1980 to 1990, women participated actively in the protection of their families' health through various women's popular associations: health committees, the Glass of Milk Programme and soup kitchens. Their participation was essential in activities encouraged or supported by NGOs, the Ministry of Health, municipalities and even communities. Women played a considerable role in vaccination campaigns and efforts to combat the cholera epidemic and infectious and contagious diseases.

97. Women's work in health care is basically voluntary and generally to the detriment of their own health, since it prolongs their working hours.

98. Access to education is a desire shared by women at every level of society and in every ethnic and cultural sector of the population. An education makes it possible for women whose mother tongue is Quechua, Aymara or a native language of the Amazon jungle to express themselves in Spanish, the official language. Education and, especially vocational training make it easier for women to enter urban life and the workplace.

99. The educational profile of women covers a range which varies from university training to illiteracy. Over the past decade, there has been a great improvement: the educational level of women, together with and in comparison with that of men, has continued to rise, the illiteracy rate has declined, the rate of school attendance by girls is now very close to that for boys, and increasing numbers of women have reached the highest levels of education.

100. The factors analysed below include the illiteracy problem, women's levels of education, the education system, university education and problems involving the quality of education.

101. All these matters are dealt with in the 1993 Constitution, article 13 of which states "The purpose of education is the full development of the human person. The State recognizes and guarantees freedom of education. Parents have the duty to educate their children and the right to select schools and to participate in the educational process".

102. Illiteracy: there are currently 1,297,168 illiterate women in Peru. They account for 73 per cent of the total number of illiterates, which means that illiteracy in Peru is essentially a women's problem. There are still quite significant differences between women according to the area in which they live: whereas only 10 per cent of women in urban areas are illiterate, the figure for women in rural areas is 43 per cent. The departments in the Sierra region, which have a low level of development, have large numbers of illiterate women.

103. From 1981 to 1993, the rate of illiteracy among women dropped by 7.8 percentage points. The gap between the sexes narrowed in urban areas but remained wide in rural regions, which are still far behind in the area of education and where resistance to, or specific problems concerning, education continue to exist.

104. On balance, the illiteracy problem seems to have shifted somewhat towards the cities and towns, a fact which may be related to the migration from, and depopulation of, rural areas resulting from terrorist violence.

105. Women have always had higher levels of illiteracy than men, although the gap is tending to narrow significantly in younger age groups.

106. While illiteracy is more frequent among older members of the population, a situation which may be attributed to the failings and ills of the past, it still persists among young people between 15 and 24 years of age. This is particularly true in the rural parts of the Sierra region, where girls whose mother tongue is Quechua or Aymara still have problems associated with access to, and continued enrolment in, primary school.

107. To summarize, from the point of view of distribution by sex, illiteracy continues to be primarily a women's problem. If illiteracy rates are analysed by sex and area of residence, it is clear that the problem affects primarily women rather than men and rural rather than urban women.

108. Women's levels of education have risen; the proportion of women aged 15 and older who have no education, or who have attended primary school only, has dropped, whereas there has been an increase in the proportion of the population with education at the secondary level or higher. The average length of education rose from 5.4 years in 1981 to 7.1 years in 1993. The most striking change in this area was the increase in the percentage of women in higher education, which rose from 8 per cent in 1981 to 19 per cent in 1993.

109. In general, there has been clear progress over the past few years in the level of education of the female population. Some 51 per cent of women over 15 years of age have reached the secondary or higher level of education, although differences between men and women remain in the older age groups.

110. The Peruvian education system offers various means of obtaining vocational training. The general trends over the past few years have included diversification of the options offered by the education system, clarification of a complex system which channels students according to their different social needs, and increased enrolment at all levels and in all types of occupational and professional education.

111. The number of women in university education has continued to increase: of every 10 people who reach the highest educational levels, 6 are men and 4 women. The same cannot be said of the professions, where there seems to be a persistent presence of women in occupations traditionally considered to be for women. There is, nevertheless, what might be termed a tentative movement towards areas of study generally considered to be male preserves. This demonstrates the importance of the inclusion of women in every profession and the entry of men into a number of "women's" fields.

112. With regard to problems with the quality of education, the climate of violence that existed from 1980 onwards significantly jeopardized possibilities of maintaining, on a day-to-day basis, the stable conditions that schools require in order to function.

113. Finally, worsening poverty levels affected continued school attendance. It is estimated that drop-out rates at the primary and secondary levels, which had been falling until 1990, rose in 1991, the year after the start of structural adjustment. What stands out in the history of national education over the past decade has been the impoverishment of State schools, the decline in teachers' salaries, the deprofessionalization of teachers, and the consequent deterioration in educational standards; the effects are even more serious in so far as they have been accompanied by the increasing poverty of families.

Article 4

114. Peruvian law regulates cases of emergency in article 137 of the 1993 Constitution, which stipulates that the President of the Republic may, with the assent of the Council of Ministers, declare a state of emergency or state of siege for a specific period throughout the national territory or in part of it. He must report on the action taken to Congress or the Standing Commission.

115. A state of emergency is decreed in the event of a disturbance of the peace or internal order, a disaster, or serious circumstances affecting the life of the nation. In such a situation, the constitutional rights connected with personal freedom and security, inviolability of the home, and freedom of assembly and movement, as set forth in the chapter on the fundamental rights of the individual, may be restricted or suspended. Under these conditions, the imposition of a sentence of exile is forbidden.

116. A state of emergency may not remain in force for more than 60 days, although it may be extended for another 60 days; such an extension, like the declaration of a state of emergency, requires the adoption of a Supreme Decree.

117. A state of siege is decreed in the event of invasion, external or civil war or imminent danger thereof. It is an important requirement for the establishment of a state of siege that the fundamental rights whose exercise is not restricted or suspended should be specified.

118. A state of siege remains in force for 45 days. The duration of any extensions is not indicated; it is merely stipulated that, if a state of siege is adopted, it must be approved by Congress, which meets ex officio after the adoption.

119. It is also important to mention that the Government of Peru has been complying punctually with its international obligations to report states of emergency and the suspension of guarantees to the competent bodies of the United Nations and the Organization of American States (OAS).

120. For this purpose, the Peruvian Ministry of Foreign Affairs, through its accredited representatives abroad, maintains a constant channel of communication with the United Nations and the OAS; every quarter, they are sent the texts of Supreme Decrees declaring temporary states of emergency in certain areas of the country and suspending some of the guarantees laid down in the Constitution.

121. In April 1994, for example, the issuing of Supreme Decree No. 023-93 of 28 March 1994 and a number of recently-issued related provisions were reported.

122. Over the past few years, Peru has promulgated innumerable provisions concerning the rights to work, health, social security and other matters related to economic, social and cultural rights, bearing in mind the 1993 Constitution and the goal of ensuring the well-being of society as a whole.

Article 5

123. This article describes two mechanisms for safeguarding the provisions of the Covenant. The first paragraph of the article states the need to set up mechanisms to prevent any misinterpretation of the Covenant's provisions so that it cannot be used by any person, group or Government to carry out acts that might violate or restrict the rights laid down therein or introduce restrictions beyond those stated in the Covenant.

124. In this connection, it is important to note that both the 1979 Constitution (art. 4) and the 1993 Constitution (art. 3) refer to the numerus apertus system, stating that the rights recognized in Title I, Chapter I, of the Constitution, on the fundamental rights of the individual, are not the only legally guaranteed ones; they also imply the inclusion of similar rights arising from inherent human nature or from the republican form of government. Thus, not only is any form of restriction of rights, by any means whatsoever, forbidden; it is also recognized that all rights specifically laid down in legislation, by virtue of their origin, are part of Peruvian law.

125. Article 5, paragraph 2, of the Covenant deals with potential conflicts between the provisions of the Covenant and other rules of domestic law. The 1993 Constitution deals with this matter in Title II (The State, the Nation and its Territory) (Treaties), Chapter II.

126. In this respect, it should be noted that, with regard to the relationship between provisions of international law, such as those of a treaty, and domestic law, both the 1979 and the 1993 Constitutions recognize the theory of modified monism, under which an international treaty is considered part of domestic law. However, before being definitively incorporated therein, it must be approved by Congress and then ratified by the President of the Republic. Thus it is stipulated that treaties entered into by the State and in force are part of domestic law (art. 55).

127. It is also stated that the prior approval of Congress shall be required only in the case of treaties that deal with the following subjects:

(i) Human rights;

(ii) Sovereignty, dominion or integrity of the State;

(iii) National defence;

(iv) Financial obligations of the State.

128. Congressional approval is also required for treaties that impose, amend or repeal taxes, require the amendment or repeal of any law, or require legislative measures for their implementation. In all other cases, the President need only report them to Congress (art. 56).

129. It is also stated that, if a treaty affects provisions of the Constitution, it must be approved by the same procedure as that which governs constitutional reform before being ratified by the President of the Republic (art. 57). In such cases, the constitutional provision shall not be repealed but shall not apply to States signing the treaty and, if the treaty expires, the constitutional provision shall come back into force.

130. Finally, reference must be made to the fourth transitional and final provision of the 1993 Constitution, which is a clear demonstration of the importance that the Peruvian State attaches to international legal instruments, such as the International Covenant on Civil and Political Rights and the rights contained therein, by establishing that legal provisions relating to the rights and liberties recognized by the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on those subjects ratified by Peru.

131. In the 1993 Constitution, Peru reaffirms the democratic and representative system. Article 43 establishes that the Republic of Peru is democratic and social. Its Government is unitary, representative and decentralized, and is organized in accordance with the principle of the separation of powers. The Constitution assigns to the State four fundamental duties (art. 44):

(a) To defend national sovereignty;

(b) To guarantee the full realization of human rights;

(c) To protect the public from threats to its security; and

(d) To promote the general welfare, which is based on justice and on the full and balanced development of the nation.

The administration of justice

132. The system of administration of justice, which is based on the principles of independence and observance of due process and on effective judicial protection, is responsible for guaranteeing the rule of law and respect for fundamental rights and civil liberties. An essential guarantee is that judges are bound to ensure that the Constitution takes precedence over any legal provision that infringes it. Another such guarantee is the principle of the hierarchy of laws (Constitution, art. 51).

The Legislature

133. The essential function of the Legislature, in addition to the adoption, interpretation, amendment or repeal of laws and legislative decisions, is to ensure respect for the Constitution and the laws and to enact the necessary legislation to establish the liability of wrongdoers (Constitution, art. 102). Under the rules of procedure of Congress, there is a Commission on Human Rights within the House with responsibility for protecting and guaranteeing human rights and investigating any violations of those rights. The Commission constitutes the cornerstone of the general system of protection of human rights in Peru.

The Executive

134. The Executive has incorporated organizations for the promotion and defence of human rights at the institutional level. Chief among them is the National Council for Human Rights (Decree-Law No. 25,993, art. 7), which is an agency of the Ministry of Justice with responsibility for promoting, coordinating and disseminating information and advising on the protection and realization of the fundamental rights of the individual (Ministerial Decision No. 076-93-JUS, art. 127). The Council is composed of representatives of various sectors of the Government and civil society (Supreme Decree No. 038-93-JUS).

135. There are also human rights departments in every ministry and agency of the armed forces and the National Police, with responsibility for ensuring respect for human rights and civil liberties. The State recognizes and respects the contribution of non-governmental human rights organizations. There are many of them, and they operate in all areas involving the protection and promotion of human rights. Chief among these is the National Human Rights Coordinating Organization, which provides a focus for and represents all the NGOs.

Remedies available to an individual for the protection of his fundamental rights, and compensation and rehabilitation procedures

136. Title V of the Constitution "Constitutional guarantees" establishes six constitutional guarantees or procedural instruments for the protection of fundamental rights and the supremacy of the Constitution (Constitution, art. 200).

Habeas corpus proceedings may be brought in the case of any act or omission, by any authority, official or individual, which jeopardizes or threatens individual freedom or related constitutional rights;

Amparo proceedings may be brought in respect of any act or omission, by any authority, official or individual, which jeopardizes or threatens other rights recognized by the Constitution. It is not applicable against legislation enacted or court decisions reached in accordance with the regular procedure. This is obvious since specific constitutional actions (indicated below) lie against the former and appeals may be lodged against the latter;

Habeas data proceedings may be brought against any act or omission, by any authority, official or individual, which jeopardizes the rights established in article 2, paragraphs 5, 6 and 7, of the Constitution. The paragraphs cited guarantee freedom of information, in other words, that computerized services shall not supply any information that will violate the right to privacy, and the right to honour and a good reputation;

An unconstitutionality action may be brought against any provisions having the rank of law which are contrary to the Constitution in form or substance, such as laws, legislative decrees, emergency decrees, treaties, congressional regulations, regional provisions and municipal ordinances;

A public right of action lies against any regulations, administrative provisions and general decisions or decrees issued by any authority on the grounds that they violate the Constitution and the law;

An action for compliance lies against any authority or official who refuses to comply with a legal provision or administrative act, without prejudice to statutory liability.

137. It is significant that the exercise of habeas corpus and amparo proceedings is not suspended while states of emergency are in force. If such actions are brought in respect of rights which have been suspended or restricted, the competent court must examine whether the restrictive measure is reasonable or proportional (Constitution, art. 200).

Remedies in ordinary legislation

138. The legislation in force governing criminal procedure authorizes any citizen to report to the Public Prosecutor's Department any publicly actionable criminal offence that violates fundamental rights (Code of Criminal

Procedure, art. 76). Similarly, article 11 of the Public Prosecutor's Department Organization Act establishes that the Government Procurator is the official empowered to bring a public criminal action; he may do so on his own initiative, upon application by an injured party or through public right of action. Any citizen may make a report to the provincial procurator or the senior procurator, who is obliged, where appropriate, to begin the appropriate preliminary investigation and initiate criminal proceedings before the courts.

139. The new Code of Criminal Procedure confirms this position (art. 112). Article 103, which protects collective interests, reads: "Non-governmental organizations which are registered and recognized as such and whose purpose is the protection of human rights are empowered to lodge complaints, lodge an appeal in the event of refusal of an application and bring criminal indemnification proceedings with all the powers granted to them by law". The competence of NGOs to combat violations of human rights more effectively in a criminal court is thus recognized; it is important to stress that the Peruvian legal system is moving towards greater involvement of citizens in lodging complaints and in strengthening the legal conscience of the community.

140. The new system of criminal procedure incorporates the modern accusatory model in the trial of criminal offences. It gives the Public Prosecutor's Department an active role in investigating the offence, strengthens the right of defence and safeguards for the litigant, and establishes a Judiciary whose key function is to monitor the procurator, order coercive measures and conduct the trial stage. Ordinary offences fall within the competence of the ordinary courts. Offences committed by members of the armed forces fall within the competence of the military courts, provided that they involve acts directly linked to military or police duties and to the extent that they affect lawful assets which belong exclusively to the armed forces and the disciplinary regulations of the armed forces or the National Police (new Code of Criminal Procedure, art. 14).

141. The Children's and Young Persons' Code, established by Decree-Law No. 26,102, guarantees the rights and freedoms of children and young persons. Pursuant to article 75 of this Code, the Public Prosecutor's Department shall ensure compliance with its provisions. Article 76 authorizes any natural or legal person to report to the administrative or judicial bodies any failure to comply with the provisions of this law, including those which prohibit torture and any cruel or degrading treatment.

Compensation systems

142. Article 139, paragraph 7, of the Constitution guarantees compensation, in the manner prescribed by law, for miscarriages of justice in criminal proceedings and for arbitrary detention, without prejudice to any liability that may be incurred.

143. Act No. 24,973 of 28 December 1988 establishes regulations concerning compensation for miscarriage of justice and arbitrary detention. The compensation must be paid by the State through the National Compensation Fund for Miscarriages of Justice and Arbitrary Detentions, under a very summary procedure in a civil court.

144. In broad terms, the Civil Code establishes regulations concerning non-contractual liability or illegal acts by virtue of which any person who is injured by the unlawful conduct of a public official or servant may claim the appropriate compensation from him or from the State (Civil Code, arts. 1,969 and 1,981).

Protection of the rights provided for in the various human rights instruments

145. The laws of Peru establish comprehensive protection of human rights. Dual protection is provided, nationally and internationally, inasmuch as Peru has ratified virtually all the international human rights instruments and is subject to monitoring by the various supervisory bodies, such as the Inter-American Commission on Human Rights and the United Nations Human Rights Committee.

146. In the first place, under the Constitution, the protection of the individual and respect for his dignity represent the ultimate aim of society and the State. Accordingly, it recognizes the following rights of the individual: the right to life, to his or her identity and integrity (art. 2, para. 1); the right to equality before the law (art. 2, para. 2); the right to freedom of conscience and religion (art. 2, para. 3); the right to freedom of information (art. 2, para. 4); the right to honour and privacy (art. 2, para. 7); the right to freedom of creation (art. 2, para. 8); the right to inviolability of the home (art. 2, para. 9); the right to confidentiality and inviolability of communications and private documents (art. 2, para. 10); the right to freedom of movement (art. 2, para. 11); the right to freedom of assembly (art. 2, para. 12); the right to freedom of association (art. 2, para. 13); the right to enter freely into contracts (art. 2, para. 14); the right to freedom of work (art. 2, para. 15); the right to own property and to inherit (art. 2, para. 16); the right to participate in civic affairs (art. 2, para. 17); the right not to disclose one's beliefs (art. 2, para. 18); the right to ethnic and cultural identity (art. 2, para. 19); the right to make petitions (art. 2, para. 20); the right to a nationality (art. 2, para. 21); the right to personal liberty and security of person (art. 2, para. 22); the right to protection of health (art. 7); the right to education (art. 13); the right to form and join trade unions, to collective bargaining and to strike, and to protection against arbitrary dismissal (arts. 27 and 28).

The Ombudsman

147. The Office of the Ombudsman was established by the 1993 Constitution as an autonomous agency reporting annually to the Congress on its activities and responsible for safeguarding the constitutional and fundamental rights of the individual and the community and for supervising the State Administration's performance of its duties and the provision of public services (Constitution, arts. 161 and 162). The Office may initiate legislation and propose measures to improve its performance. The Office, which used to be part of the Public Prosecutor's Department - Attorney General of the Nation, unquestionably marks a step forward in the protection of human rights and demonstrates Peru's determination to ensure they are observed.

The National Register of Detainees

148. With this in mind, the Public Prosecutor's Department has set up the National Register of Detainees, for which the Office of the Special Procurator for Human Rights is responsible. It is intended to prevent arbitrary arrest, the enforced disappearance of persons, torture and extrajudicial executions, and is backed by a computerized programme to monitor arrests made by the security forces. The National Register of Detainees is now in operation and has the following characteristics:

(i) It originated in the Letter of Understanding signed in January 1992 by the Public Prosecutor's Department, the Ministry of the Interior, the United States Embassy, the Agency for International Development (USAID), and the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD). USAID will provide the necessary funds and technical assistance to implement the Register. It is headed by an official appointed by ILANUD.

(ii) The basic objective of the Register is to further the defence of human rights and the administration of justice in Peru. It is accordingly designed to ensure that police investigations of detained persons suspected of having committed ordinary or extraordinary offences are more transparent, by establishing a public system of registration of data on detainees. Initially, the main focus of its work was to register persons detained for the offence of terrorism. It is also meant to increase the capacity of the Public Prosecutor's Department to investigate complaints of violations of human rights, particularly concerning persons who have disappeared.

(iii) The Register is currently kept by the Public Prosecutor's Department and consists of two separate registers: one provided by the Ministry of Defence and the other by the National Police. Both institutions are linked by computer systems to the Public Prosecutor's Department. The Register has 56 terminals located in the various branches of the Public Prosecutor's Department (Offices of the Procurators for Human Rights) throughout the country. The number of terminals will shortly be increased to 104.

(iv) The information received by the Public Prosecutor's Department constitutes the data bank on the situation of detainees in Peru, especially in the case of terrorist offences and offences against the security of the State. Once the Register is functioning properly, it will be accessible by procurators, the Ministry of Foreign Affairs and other government departments, the International Committee of the Red Cross and other national or international institutions directly concerned with human rights; any citizens who need to consult it will also have access to it through the Procurator for Human Rights within the Public Prosecutor's Department.

149. Similarly, under Legislative Decree No. 665 of 3 September 1991, procurators within declared emergency zones are authorized to enter police stations, prefectures, military facilities and any other detention centre in order to verify the situation of persons who have been detained or reported to have disappeared. The Public Prosecutor's Department Organization Act sanctions the authority of the procurator to visit prisons and temporary detention centres in order to hear complaints and requests by untried and convicted prisoners relating to their conditions of detention and their constitutional rights (Legislative Decree No. 052, art. 95).

The state of exception

150. Article 137 of the Constitution relating to states of exception provides that it is the responsibility of the President of the Republic to declare a state of exception, with the assent of the Council of Ministers. The Supreme Decree setting forth that decision must stipulate precisely its duration and the area in which it will be in force, and inform Congress or the Standing Commission. The Constitution recognizes two states of exception, the state of emergency and the state of siege.

(i) A state of emergency is decreed in the event of a disturbance of the peace or internal order, a disaster or serious circumstances affecting the life of the nation. In such circumstances, the rights connected with personal freedom and security, inviolability of the home and freedom of assembly and movement may be restricted or suspended. The state of emergency may not remain in force for more than 60 days, a new decree being required for any extension. The armed forces assume control of law and order if the President of the Republic so directs.

(ii) A state of siege is decreed in the event of invasion, external war or civil war or imminent danger that they might arise. The fundamental rights whose exercise is not restricted or suspended must be specified. The state of siege remains in force for 45 days. When it is decreed, Congress meets ex officio; any extension requires congressional approval.

151. The regulations relating to states of exception have been established by Act No. 24,150 and Legislative Decree No. 749. When the armed forces, by decision of the Government, assume control of law and order, they do so through the Political Military Command, which is given the duties of coordinating and harmonizing actions with the public and private sectors in order to carry out peacemaking and development plans; the Command is also in charge of directing development activities in the areas under its jurisdiction, for which purpose the competent authorities place at its disposal the necessary resources, goods, services and personnel to discharge its mission. As is to be expected, the Political Military Command has under its control the members of the National Police, who carry out its instructions and orders.

152. As explained earlier, the declaration of a state of exception does not suspend the exercise of habeas corpus or amparo proceedings; as far as the restricted and suspended rights are concerned, the judge must decide whether

the measure imposing the restriction or suspension is reasonable and proportional (Constitution, art. 200). Similarly, article 8 of the Public Prosecutor's Department Organization Act stipulates that the declaration of a state of exception shall not interrupt the activity of the Department or the right of citizens to have recourse to it or to apply to it in person.

153. These provisions simply reflect the intention to guarantee the full realization of fundamental rights in Peru, all the more so since, as already stated, many treaties on the subject have been ratified.

Way in which human rights instruments become part of national legislation

154. Article 55 of the Constitution provides that: "The treaties concluded by the State and in force form part of national law". In turn, treaties on human rights, under article 56 of the Constitution, must be approved by Congress before being ratified by the President of the Republic. If the treaty affects constitutional provisions, it must be approved by the same procedure which governs amendment of the Constitution before being ratified by the President of the Republic (Constitution, art. 57). This means that it must be approved by an absolute majority of the total number of members of Congress and ratified through a referendum, which may be dispensed with if the agreement is obtained in two successive regular legislative sessions with an affirmative vote, in each case, of more than two thirds of the members of Congress (Constitution, art. 206).

155. Under article 57 of the Constitution, the denunciation of treaties is the prerogative of the President of the Republic, but in cases where the treaties are subject to approval by Congress, such as those dealing with human rights, the denunciation must have its prior approval.

156. It is the responsibility of the President of the Republic to comply, and ensure compliance, with treaties (art. 118, para. 1), to conduct foreign policy and international relations, and to conclude and ratify treaties (art. 118, para. 11); it is the function of Congress to approve treaties in accordance with the Constitution (art. 102, para. 3). An action for unconstitutionality lies against any legal provisions - of a treaty, for example - which are contrary to the Constitution in form or in substance (art. 200, para. 4), in other words, when a treaty is incorporated in breach of the provisions of articles 56 and 57. A treaty may be declared unconstitutional and rejected by the Constitutional Court if it is not approved by Congress in respect of the matters covered by article 56 or if it affects constitutional provisions and, notwithstanding this, the approval procedure required by article 206 of the Constitution has not been followed.

157. Since a treaty forms part of national law and ranks as a statute so that its own constitutionality may even be challenged before the Constitutional Court, its provisions may be invoked before the courts by any person who feels that any of the rights established by the treaty have been affected. There is little case law on the subject, but it is quite clear that treaties may be invoked and directly applied by the courts and administrative authorities.

158. Article 205 of the Constitution establishes that, once the internal jurisdiction has been exhausted, anyone who considers that his rights as

recognized by the Constitution have been violated may appeal to the international courts or bodies constituted under treaties or agreements to which Peru is a party. It is significant in this connection that Peru accepts the jurisdiction of the Inter-American Court of Human Rights, a court which is currently hearing a number of cases of interest to Peru.

Anti-terrorist legislation and peacemaking

159. Since 1980, Peru has been subjected to a criminal offensive by the terrorist gangs "Sendero Luminoso" and the Tupac Amaru Revolutionary Movement, an offensive which has caused over 25,000 deaths and damage totalling over US$ 25 billion, an amount greater than the country's external debt. In addition, thousands of families have been driven from their homes by the violence which is rife in rural areas.

160. The State has been compelled to resort to criminal legislation and the suspension of rights as permitted under states of exception in order to deal with this exceptional criminal activity. In addition, a legal and institutional framework has been designed in order to deal effectively with terrorism, which had spread throughout the country and was seriously threatening the very life of the nation. Striking examples of this political strategy to combat crime are Decree-Laws No. 25,475 of 6 May 1992, No. 25,564 of 20 June 1992, No. 25,659 of 13 August 1992, No. 25,708 of 10 September 1992, No. 25,744 of 27 September 1992, No. 25,880 of 26 November 1992 and No. 25,499 of 16 May 1992, as well as Act No. 26,220 of 26 August 1993 and Act No. 26,248 of 25 November 1993.

161. Offences committed for terrorist purposes, which are the subject of this special legislation, are of two types: (a) ordinary terrorist offences and related offences, and (b) the offence of treason.

The offence of terrorism

162. An ordinary terrorist offence consists in provoking, creating or maintaining a state of anxiety, terror or fear among the population or part of the population. It covers acts committed by any person against life, security of person, individual freedom, property, the security of buildings, roads or railways, electricity pylons or power plants. The means must involve the use of weapons, explosive materials or devices or any other means which may cause damage or serious disturbance of the peace or affect the international relations or security of society or the State.

163. On this basis, definitions have been made of a number of aggravated offences, such as membership of an armed gang, attacks on property for terrorist purposes and the use of minors in the perpetration of these offences. Included also in this definition are acts of collaboration with terrorism, such as the storing of explosives, financial assistance, or the organization of indoctrination or training courses or centres for terrorist groups. Other prohibited acts are association for purposes of terrorism, public incitement to terrorism, and advocacy of violence and terrorism.

164. These characterizations constitute a precise framework for all acts perpetrated by terrorists and enable a distinction to be made between a

political opponent who uses peaceful means of dissent and a terrorist belonging to an armed gang that uses criminal methods in an attempt to destroy the State and impose a totalitarian plan on society.

The offence of treason

165. A person is guilty of the offence of treason if he perpetrates any of the following six criminal acts:

(a) First, if he uses car bombs or weapons which cause death or create serious social danger, provided that the fundamental characteristic of causing a state of anxiety exists;

(b) Secondly, if he stores or is in possession of explosives intended for use in terrorist acts of sabotage such as those described above;

(c) Thirdly, if he is a ringleader of a terrorist organization;

(d) Fourthly, if he is a member of a murder squad set up physically to eliminate persons;

(e) Fifthly, if he supplies reports, plans or documents intended to aid and abet terrorist acts of sabotage provided for in subparagraphs (a) and (b) above;

(f) Sixthly, if as a teacher he influences his students by advocating terrorism.

166. The acts characterized as offences in the previous paragraph are also liable to the punishment prescribed for the most serious forms of terrorism. The characterization is rigid and is drawn from national experience of the behaviour of the terrorist gangs, and at the same time includes those acts which cause the greatest damage and public alarm.

Anti-terrorist trials

167. Anti-terrorist procedural legislation seeks to render the crime control agencies efficient by providing them with the necessary tools to punish severely the perpetrators of, and accomplices in, offences committed for terrorist purposes. To that end, the powers of the police have been increased, without reducing the Public Prosecutor's powers of monitoring and supervision. Provision has been made for very rapid proceedings in order to respond quickly to charges of such offences, making it possible to determine promptly and fairly the legal status of the accused. The institution of the "faceless judges", which is Colombian in origin, and the use of military courts to try cases of treason for terrorist purposes constitute two essential parts of this system of prosecution. These steps have been taken because the terrorist gangs used to identify judges and intimidate them and, in many instances, made attempts on their lives. In addition, because of the precarious state of the judicial system, which in fact made reform essential, the perpetrators of, and accomplices in, these offences were able to escape

proper punishment; consequently, given the increase in terrorist violence, it became essential to resort to the military courts in order to try terrorist acts constituting treason.

168. The Constitution establishes a maximum of 15 days' pre-trial detention by the police. Notwithstanding this, detainees do not lack a proper defence because the role of the Public Prosecutor's Department was not abolished by the anti-terrorist legislation. The Procurator not only visits detention centres and provides defence for detainees, but ensures that the police investigation does not exceed the limits imposed by the law. Every detention is reported to the Public Prosecutor and the judge, and it is from that point that the procurators begin their work of monitoring and supervision. The Constitution prohibits torture and recognizes the right of detainees to ask for an immediate medical examination. Consequently, although the police now have greater powers, the Peruvian legal system recognizes the power of the Public Prosecutor's Department to guarantee the rights of the citizen and the right of the latter to demand medical examinations in order to establish whether or not he has been subjected to improper treatment.

169. In cases of treason, Decree-Law No. 25,744 authorized the extension of police custody; that decision was incumbent not on the police themselves but on the military judge. In any event, without prejudice to the institutional guarantees specified above, the present Constitution does not permit such an extension (Constitution, art. 2, para. 24 (f)).

170. Decree-Law No. 25,475 restricts the intervention of the defence counsel to the period immediately preceding the formal statement by the accused; the enactment of this provision was due to the existence of an organization made up of lawyers linked to the terrorist gangs who would coach the detainees, threaten them and force them to adopt a certain attitude during the trial. This restriction should be viewed in the light of the work of the Procurator in protecting civil rights. The present Constitution stipulates that any person has the right to communicate personally with a defence counsel of his choosing and to be advised by him as soon as he is summoned or detained by any authority (art. 139, para. 14). Consequently, this constitutional provision takes precedence over the concern to provide maximum guarantees of the right of defence.

171. Furthermore, the offence of enforced disappearance has been added to Peruvian criminal legislation (Decree-Law No. 25,592 of 2 July 1992), which punishes any public official or servant who deprives a person of his freedom by ordering or performing acts which result in that person's duly established disappearance. The existence of this offence demonstrates the State's determination, through legislation, to punish severely acts by officials of the security agencies which violate human rights. The statement that these acts are investigated by the Provincial Procurator and the issue of specific guidelines on this subject (decision No. 342-92-MP/FN of 11 July 1992), as well as the keeping of the National Register of Detainees, with international cooperation, prove that such acts are not tolerated by the Government and that they in fact constitute a serious retrograde step in the national peacemaking campaign.

172. The armed forces and the National Police have also issued numerous guidelines and regulations designed, first, to educate members of the armed forces and the police in respect for human rights, secondly, to avoid acts which constitute violations of civil rights, and thirdly, to punish severely the perpetrators of human rights violations.

Easing of anti-terrorist legislation

173. The legal measures adopted by the Government as part of its efforts to tackle terrorism have led to the dismantling of subversive groups, with the capture of important leaders in various parts of the country and the active participation and organized support of the community. As a result it has become necessary to relax the measures in question.

Article 6

174. Article 23 of Peru's Constitution states that "Work in its various forms receives priority attention from by the State, which affords special protection to working mothers, minors and disabled persons". Article 26, paragraph 1, recognizes equality of opportunity without discrimination as one of the principles of labour relations.

175. It is worth mentioning the increase in the number of infrastructure works undertaken by the State to generate employment for large numbers of people and thereby ensure that employment is available for all.

176. The Constitution contains provisions to guarantee freedom of employment, in addition to those which ensure that the terms of employment do not breach the fundamental political and economic liberties of the individual:

(i) The right to work freely, in accordance with the law (art. 2, para. 15);

(ii) Work in its various forms receives priority attention from the State, which affords special protection to working mothers, minors and disabled persons. The State promotes conditions for social and economic progress, in particular through a policy of encouraging productive employment and occupational training. No labour relationship may limit the exercise of constitutional rights or disregard or diminish the worker's dignity. No one shall be compelled to work without his free consent (art. 23);

(iii) In conformity with article 24, workers are entitled to fair and adequate remuneration to enable them to provide material and spiritual well-being for themselves and their family. The payment of remuneration and social benefits to the worker has priority over any other obligation of the employer. Minimum wages are determined by the State, with the participation of the organizations representing workers and employers;

(iv) The ordinary period of work may not exceed 8 hours per day or 48 hours per week. In the case of cumulative or exceptional periods of work, the average number of hours worked may not exceed

these maximum amounts. Workers are entitled to remunerated weekly and annual rest periods. Their entitlements and compensation are determined by law or by agreement (art. 25);

(v) The following principles apply to labour relations:

(i) Equality of opportunity without discrimination;

(ii) Irrevocable nature of the rights recognized by the Constitution and the law;

(iii) Interpretation in a manner favourable to the worker in the case of unresolvable doubt regarding the meaning of a provision (art. 26).

177. In conformity with article 22, work is both a duty and a right. It is the basis of social well-being and a means of self-fulfilment.

178. In accordance with article 23, work in its various forms receives priority attention from the State, which affords special protection to working mothers, minors and disabled persons. The State promotes conditions for social and economic progress, in particular through a policy of encouraging productive employment and occupational training. No labour relationship may limit the exercise of constitutional rights or disregard or diminish the worker's dignity. No one shall be compelled to work without remuneration or without his free consent.

179. Article 26 of the Constitution enshrines the following principles:

(i) Equality of opportunity without discrimination;

(ii) Irrevocable nature of the rights recognized by the Constitution and the law;

(iii) Interpretation in a manner favourable to the worker in the case of unresolvable doubt regarding the meaning of a provision.

Article 27 stipulates that the law shall provide workers with adequate protection against arbitrary dismissal.

180. In conformity with article 28, the State:

(i) Guarantees trade union freedom;

(ii) Encourages collective bargaining and promotes the peaceful settlement of labour disputes. Collective agreements are binding on the contracting parties;

(iii) Regulates the right to strike so that it may be exercised in keeping with the interest of society. The State determines exceptions and limitations thereto.

181. In conformity with article 29, the State recognizes the right of workers to participate in the profits of their undertaking and promotes other forms of participation.

Legislative Decree No. 276 - Basic Act on Public Sector Administrative Careers and Remuneration

182. Administrative careers: A set of principles, provisions and procedures for regulating the recruitment, rights and duties of public servants who, on a regular basis, provide permanent services within the Public Administration (art. 1).

Purpose: To permit the recruitment of suitable personnel, guarantee their long-term employment, ensure their development and promote their self-fulfilment in the performance of public service.

Exceptions: Members of the armed forces and police, as well as State employees in joint undertakings (art. 2).

Principles: In conformity with article 4:

(a) Equality of opportunity;

(b) Stability;

(c) Guarantee of seniority; and

(d) Fair and equitable remuneration, regulated by an approved single system.

Single system of remuneration: In conformity with article 5, remuneration is based on the following principles:

(a) Universality;

(b) Technical basis;

(c) Direct connection with the administrative career; and

(d) Adequate monetary compensation.

183. To ensure that work is more productive and effective, provisions simplifying administrative procedure have been issued in the public sector. These are intended to reduce red tape and impose productivity.

184. In the legislative sphere, the Employment Development Act (Legislative Decree No. 728) and the relevant regulations (Supreme Decree No. 004-93-TR) have established special employment programmes to encourage the employment of categories of workers who experience difficulties in finding work. These programmes will comprise measures such as vocational training, retraining for more productive and dynamic occupations, professional guidance and training, incentives and assistance to facilitate geographical and occupational

mobility, loans and financial assistance, and entrepreneurial advice on the setting-up and operation of small firms or micro-enterprises, and other forms of association among workers based on own-account employment.

185. Mention may also be made of the productive rationalization programmes for firms in the informal urban sector whose purpose is to improve the sector's productivity and develop its job-creation capacity. The programmes are open to workers who have been made redundant as a result of industrial re-organization and technological redeployment, employees working in activities classified as essentially informal and independent workers who work mainly in the informal urban sector.

186. Measures have been introduced to promote rationalization such as the simplified incorporation and registration procedure to encourage the formalization of small production units, the administrative amnesty, technical assistance with production, entrepreneurial counselling, vocational training and retraining, training in business management, provision of soft loans, solidarity guarantee funds and revolving guarantee funds.

187. Measures have also been taken to promote full, productive and freely chosen independent employment by fostering forms of association by workers who wish to set up their own firms as an effective means of generating new jobs. Action has been taken to increase productivity and to update and improve workers' know-how and skills, to provide workers with information on the use of new technology in their occupation, to prepare workers for a vacancy or new job, and to eliminate occupational hazards. Both the training and productivity enhancement programmes may be implemented by means of joint committees comprising representatives of employers and workers.

188. Where technical training programmes are concerned, the National Industrial Skills Training Service (SENATI) is responsible for training young people for work in fields such as electricity, mechanics, etc. In the area of vocational training, there are both public and private universities which are open to anyone who passes the relevant entrance examination. However, it may be difficult for some people to attend university as they have had to work from a young age and have been unable to devote time to study.

189. Vocational training for young people is another means for undertakings or firms whose workers come under the private-sector regime to offer theoretical and practical training under contracts with young people aged between 16 and 21, who may constitute up to 15 per cent of the firm's total work force. The period of training may not exceed 18 months and must include remuneration of not less than the minimum living wage or remuneration proportionate to the time worked.

190. Pre-professional traineeships are a means of providing technical and professional guidance and training for students and graduates of universities and higher institutions. The pre-professional traineeships are subject to a professional training agreement concluded between the firm and the student, after the latter has been presented by his educational establishment. There is no fixed duration for the traineeships, although educational establishments normally set a minimum period as a requirement for the award of the relevant academic qualification and diploma.

191. Finally, under an apprenticeship contract, apprentices are required to work in a firm for a specific period in exchange for which the firm provides them with vocational training and pays them an agreed monthly allowance, which may in no circumstances, be less than the minimum wage. To enter into this contract apprentices must be aged over 14 and under 24 and have completed their primary education. Apprenticeship in productive activities classified in Major Division 3 of the International Standard Industrial Classification of all Economic Activities (ISIC) and the industrial activities of installation, repair and maintenance contained in the other divisions of ISIC are the responsibility of SENATI, which has already been referred to and is governed by special provisions.

192. Legal provisions have been enacted to protect working mothers; they include Act No. 22482, which grants a breast-feeding allowance to such mothers, Supreme Decree No. 5-90-PCM, which allows female public servants to take time off to breast-feed their babies and to take maternity leave, and Order No. 22-11-93, which, inter alia, allows working mothers, to accumulate holiday leave during maternity leave and time off for breast-feeding.

193. In Peru, there have been no reported cases of discrimination at work on grounds of sex, race, religion or political opinion, nationality or social origin aimed at undermining or impeding equal opportunities or treatment in employment or occupation.

194. Peru fully endorses the principles upheld by the International Labour Organization and in particular the imperative need to protect the interests of workers employed in countries other than their own, in view of the scale of migration, which affects numerous States in the international community and inevitably creates problems for the families of migrant workers. Although the international instruments which constitute Peru's basic frame of reference, such as the American Declaration of the Rights and Duties of Man, the International Covenant and the American Convention, contain no definition of the term discrimination, this lacuna is filled by other international instruments.

195. According to the international human rights bodies, not every form of different treatment constitutes discrimination, even when the distinction is based on one of the criteria set out in the provisions of the international instruments relating to discrimination. It must be made clear that the hiring of foreign workers requires different treatment from that of nationals on account of considerations such as rates of employment, unemployment, migration, etc. For this reason, in countries with high unemployment rates there is a tendency to protect national workers and to limit the hiring of foreign workers.

196. Peru has always had a high rate of unemployment, which is why the hiring of foreigners has been limited to a certain percentage of an undertaking's total workforce and their remuneration to a certain percentage of the undertaking's total wage bill. Nevertheless, the rate of unemployment in Peru has increased, actually causing Peruvian workers to emigrate.

197. It was against this background that the Government of Peru promulgated Legislative Decree No. 689, published on 5 November 1992, which governs the

hiring of foreign workers and is regulated by Supreme Decree No. 014-92-TR, dated 23 December 1992. From an analysis of these provisions, in conjunction with article No. 2,046 of the current Civil Code, which states that "Civil rights are common to Peruvians and aliens, with the exception of such prohibitions and limitations as apply to aliens and foreign legal persons on grounds of national necessity", we may assert that in practice Peru implements the various principles contained in the articles of the International Covenant on Economic, Social and Cultural Rights both in legislation and in actual labour matters.

198. Thus, the rules contained in the above provisions lay down special requirements only for the recruitment of workers; however, once they are employed no distinction is made between nationals and aliens. Once a foreign worker is legally on a firm's payroll, he benefits from the principles which shape the protective character of labour legislation; in other words, the principles of equal treatment, most favourable provision, most advantageous status, etc. all apply to him.

199. In this regard, Peru is giving effect to the provisions of the international instruments inasmuch as a foreign worker in Peruvian territory has all the civil, labour and other rights recognized therein. The denial or restriction of any of these rights constitutes a violation of human rights, whether the worker is a Peruvian national or a foreigner, and any difference between the foreigner and the Peruvian national in regard to the enjoyment of a recognized right must be examined according to the criterion of reasonableness, which is applied in general to distinguish between discrimination and justified differences in treatment.

200. The economically active population (15 years and above) is predominantly male, with 70.4 per cent of men as against 29.6 per cent of women. However, it should be noted that the proportion of women in the economically active population has been increasing in recent years at an annual average rate of 5.4 per cent; the addition of 826,000 women between 1981 and 1993 thus reflects the growing feminization of the labour force.

Article 7

201. With regard to minimum wages, Act No. 14,222 establishes the right to a minimum living wage (art. 1) and has given it the force of law. Article 5 of the Act requires this minimum wage to be geared to the cost of living, so that it does not lose its value.

202. The Government sets a minimum living wage that is adjusted by Supreme Decree. Contracting parties are free to set the wage they desire as long as they respect the legal minimum. The minimum wage is set on the basis of increases in the cost of living.

203. It is worth pointing out that there are wage-setting methods covering persons working on a fixed monthly wage, on commission and on piece-work.

204. There is a system of minimum wages applicable to every employee. However, some wage-earners are not protected by the minimum wage owing to the fact that they engage in activities in the informal sector which it has not been possible to terminate.

205. There is no inequality in Peru with regard to remuneration for work of equal value, since the 1993 Constitution prohibits any form of discrimination in article 2, paragraph 2.

206. No group of workers, including women, are deprived of equal opportunities. This is so by virtue of the principle of non-discrimination set forth in article 2, paragraph 2, of the Constitution.

207. With regard to rest, leisure and reasonable limitation of working hours and periodic holidays with pay, and also remuneration or public holidays, the Constitution stipulates, in article 25, that the normal working day is eight hours and the normal working week 48 hours. Workers are entitled to weekly and annual rest with pay. Their benefits and compensation are determined by law or by agreement.

208. Furthermore, article 1 of Legislative Decree No. 713 states that the worker is entitled to a minimum of 24 hours' rest per week, which is to be granted preferably on Sundays. Likewise, article 3 of the Decree stipulates that persons working on their rest day, if not given another day off in the same week in compensation, are entitled to the wage corresponding to the work done plus a 100 per cent overtime payment.

209. On the question of rest on public holidays, article 5 of the Decree states that workers are entitled to rest with pay on public holidays. Article 9 stipulates that work performed on public holidays with no day off in compensation is remunerated with the wage corresponding to the work done plus a 100 per cent overtime payment.

210. With regard to holidays, article 10 of the Decree stipulates that the worker is entitled to 30 calendar days' leave for each complete year of service, subject to performance of the statutory minimum number of hours.

Article 8

211. This article recognizes rights of association and the specific right to form and join trade unions.

212. In Peru, from the point of view of the law, freedom of association may be divided into the following categories: non-profit-making associations, regulated by the Civil Code; business associations (commercial firms), regulated by the General Companies Act; cooperatives, regulated by the General Cooperatives Act; trade unions, regulated by the Collective Labour Relations Act; and political organizations, which do not have a specific regulatory law and are governed by various instruments ranging from the Constitution to regulations issued by the National Elections Board.

Non-profit-making associations

213. The 1993 Constitution, in article 2, paragraph 13, states that everyone has the right to associate in and constitute foundations and various forms of legal non-profit-making organizations without prior authorization and in accordance with the law. Such associations cannot be dissolved by administrative decision.

214. This type of association is regulated by the Civil Code in Book I, section 2, article 196. These provisions relate to associations, foundations, committees, and peasant and ethnic communities.

215. The requirement is laid down that they should be entered in the appropriate register, but only to confer on them the status of legal entities and not to make possible their establishment as valid forms of organization.

216. Here mention should be made of organizations concerned with the protection and promotion of human rights in Peru. These organizations are quite numerous and have developed since the beginning of terrorist activities as means of reporting violations of human rights.

217. The State permits their existence in the same way as other forms of private organization, although confrontations have at times arisen because of different interpretations of the struggle against subversion.

Business associations

218. In accordance with article 59 of the Constitution in force, the State guarantees free enterprise.

219. The General Companies Act is the specific piece of legislation that regulates the development of this type of organization. The Act provides for the following types of association: general partnership, limited partnership, partnership limited by shares, corporation, commercial company with limited liability, public company and participatory association.

220. These forms of organization differ mainly in the liability of their members towards third parties and the ways in which the profits are distributed.

221. Such companies must be entered on the register in order to be categorized as legal entities, without which requirement their actions would be attributed to the persons that carry them out, who would then have unlimited liability towards third parties, thus defeating one of the main purposes of forming a company.

222. These companies may be liquidated by order of the Supreme Court, at the request of the Executive, if their aims or activities are contrary to public order or standards of decency.

223. The Executive can also, through a Supreme Decision, order a company that has decided to liquidate itself to continue its activity on the grounds that this would be in the public interest.

Cooperatives

224. This form of organization developed on a large scale particularly under the military governments of the 1970s. Government encouragement was given to the formation of cooperatives with entrepreneurial management. The most noteworthy were the agro-industrial units expropriated from their owners during the agrarian reform.

225. Later, savings and loan cooperatives were developed in which the depositors became members of the company. Most of these cooperatives gradually lost government support and, as a result, their situation became more and more unstable so that finally, in the last few years, many of them have disappeared or been turned into more efficient forms of enterprise.

226. The law regulating the activities of cooperatives is the General Cooperatives Act.

Trade unions

227. The 1993 Constitution, in article 28, recognizes the right to unionize, bargain collectively and strike, and guarantees its democratic exercise.

228. At the present time, the exercise of the right to form or join a trade union is regulated by the Collective Labour Relations Act (No. 25,593), which lays down the prerequisites for forming trade unions, the ways in which associations, including employers' associations, can be formed and the procedures for winding them up.

229. The Act also regulates the forms of participation of the workers in the management of their trade unions, laying down rules that permit democratic decision-making. Furthermore, the facilities available to union leaders for the fulfilment of their trade union commitments are specified.

230. It should be noted in this regard that members of the armed forces and the National Police are not permitted to form or join trade unions. This prohibition extends to public servants with authority to take decisions and those who hold positions of trust or management posts (1993 Constitution, art. 42).

231. In addition, the State recognizes the right to form or join a trade union, to carry out collective bargaining and to strike, and provides for its democratic exercise:

(i) it guarantees trade union freedom;

(ii) it encourages collective bargaining and promotes the peaceful settlement of labour disputes. Collective agreements have binding force in the sphere which they cover;

(iii) it regulates the right to strike so that it is exercised in harmony with the interests of society and lays down exceptions and limitations thereto (1993 Constitution, art. 28).

Political parties

232. Article 35 of the 1993 Constitution states that citizens may exercise their rights individually or through political organizations such as parties, movements or alliances in conformity with the law, adding that entry on the appropriate register grants them legal personality. At the present time, a bill is under discussion that would regulate the activities of political parties in Peru.

233. In summary, the Constitution seeks to ensure democratic procedures within political parties; at the moment this does not occur since many parties are directed by permanent leaderships which are not permitting renewal of the executive bodies of their organizations. It is also intended to make possible proper auditing of the sources of finance of political parties, so as to avoid acts of corruption such as those that have occurred in other countries and are at present being discovered.

Human rights organizations

234. In Peru, as a result of the difficult situation described earlier and under the protection of the constitutional rights that secure freedom of association, there has been an expansion of the activities of human rights groups, such as non-governmental organizations, of which there are now 44. Most of these belong to the Human Rights Coordinating Organization, whose main activities are carried out through various working groups.

235. The Coordinating Organization has a structure which includes a General Assembly, a Governing Board, a Standing Commission and an Executive Secretariat. It publishes annual reports in which an account is given of the main acts of violence that have been verified in Peru.

236. In Peru there is complete freedom to organize. This right is protected by article 28 of the Constitution, whereby the State recognizes the right of unionization, guarantees trade union freedom and encourages collective bargaining.

237. With regard to the classification of trade unions by category, article 15 of the Collective Labour Relations Act refers to trade unions representing an undertaking or activity, guilds, various crafts and self-employed workers - the latter being governed by the same law where applicable. It should be noted that the Act provides both that trade unions can organize themselves locally, regionally or nationally, and that workers in State enterprises can subscribe to the regime governing private activity if they do not object to the rules that limit established benefits.

238. The only requirement for forming a trade union is that it should have a membership of 20 workers in the case of unions in an undertaking or 100 workers in the case of other kinds of unions, in accordance with article 14 of the Collective Labour Relations Act. Article 12 of this Act makes it a requirement of union membership that the person concerned should be a worker in the undertaking, or carrying on the relevant trade or activity, or engaging in the occupation corresponding to the relevant category of trade union association. Also, the worker must not be on probation or a member of another

union of the same type. Lastly, the person concerned cannot be serving on the managerial staff or have been appointed to a position of trust by the employer, unless expressly permitted by the statutes.

239. In the event that the required number of workers cannot be found, there remains the option of electing two persons to represent the workers in dealings with the employer and the Labour Authority. This requires a favourable decision by more than half of the workers of the undertaking, excluding managerial staff and persons holding positions of trust.

240. In articles 2 and 3 of the Collective Labour Relations Act, the State recognizes the right of workers to organize without prior authorization. It further recognizes that membership should be free and voluntary, that the employment of a worker must not be made conditional upon membership, non-membership or relinquishment of membership, and that the worker must not be obliged to join a trade union or be prevented from doing so. However, as an exception to this principle, the 1993 Constitution establishes, in article 42, that while public servants are recognized as having the rights to organize and to strike, this does not include public officials with decision-making authority or those who hold positions of trust or managerial posts, or members of the armed forces or National Police. It goes without saying that these limitations are imposed for reasons relating to the public interest, internal order and national security. They are the only limitations in law to the freedom to form or join trade unions.

241. With regard to the right of trade unions to establish federations or confederations, articles 36 and 37 of the Collective Labour Relations Act state that the constitution of a federation requires the union of at least two registered trade unions from the same activity or category. Trade unions and federations can withdraw from the respective higher-level organizations at any time, even if there exists an agreement to the contrary.

242. Furthermore, article 35 of the Act states that grass-roots trade unions may constitute or join bodies of a higher level without impediment or hindrance. A minimum of two trade unions are required to form a federation. Likewise, two federations are required to establish a confederation. In the case of employers' associations, the minimum number of members is five, both for unions and for federations or confederations.

243. The only conditions required for the formation of a trade union are those indicated in articles 14, 16 and 17 of the Act. Article 14 calls for a minimum of 20 workers to establish and maintain a trade union within an undertaking and 100 workers for unions of other kinds.

244. Article 16 states that a meeting must be convened to form a trade union, approve its statutes and elect its executive body; all of these proceedings must be set forth in a record authenticated by a notary public or, in the absence thereof, by the local justice of the peace, specifying the place and date and containing a list of attendance.

245. *Lastly*, article 17 requires the trade union to be entered in the appropriate register, which is kept by the Labour Authority as a formal, non-constituent instrument that cannot be declared void except in the event of non-fulfilment of the statutory requirements.

246. There are no limitations on the functioning of trade unions and the Act guarantees the free negotiation of collective agreements (arts. 41 to 71).

247. Regarding the means for the free negotiation of collective contracts, the 1993 Constitution recognizes the right to bargain collectively in article 28, and safeguards and encourages its democratic exercise, as well as giving collective agreements binding force within their frame of reference. It also promotes the peaceful settlement of labour disputes.

248. Under Supreme Decree No. 011-TR-92, collective bargaining is to be carried out for the periods of time and on the dates agreed by the parties, with the possibility of as many meetings as necessary being held, unless one or both parties do not wish to continue, in which case the negotiations are terminated. If, during the bargaining, a trade union undergoes a merger or is absorbed, the organization actually grouping the various unions together is able to proceed with the bargaining through the commission which must be appointed for that purpose by a general meeting.

249. With regard to the representation of the parties, the trade unions which together account for more than half of the workers in the area in question are able to represent all the workers, provided that they agree among themselves upon the manner in which their members are to be represented. In the absence of such an agreement, the unions each represent their own members.

250. If a trade union is registered with the Labour Authority subsequent to the submission of claims by the absolute majority of the workers, collective bargaining will continue until it is completed. On the other hand, if during the negotiations the Labour Authority annuls the registration of a trade union for failure to meet the requirements governing its establishment or continued activity, or if the union is dissolved either by agreement of its members at a general meeting or by decision of a court, the absolute majority of the workers will be able to pursue the said proceeding by appointing two officers to represent them for that purpose.

251. The right to strike is recognized in article 28 of the Constitution, wherein the State acknowledges this right and regulates it to ensure that it is exercised in a manner consistent with the interests of society. It also sets out exceptions to and limitations on the right to strike.

252. The right to strike is further regulated by articles 72 to 86 of the Collective Labour Relations Act, which sets out the relevant procedure and requirements and protects essential public services. Restrictions on the right to strike, as stipulated in article 73 of the Act, are as follows:

(a) The purpose of the strike shall be to protect the rights and occupational interests of the workers concerned;

(b) The decision to strike shall be adopted by more than half of the workers concerned, convened to a meeting and voting by universal, individual, direct and secret ballot. The record of the proceedings of this meeting shall be authenticated by a notary public or, in the absence thereof, the local justice of the peace;

(c) The employer and the Labour Authority shall be given at least 5 working days' notice of such decision, or 10 days' notice where essential public services are concerned, together with a copy of the record of the voting;

(d) The subject of collective bargaining shall not have been submitted for arbitration.

253. In addition, article 75 of the Act stipulates that the exercise of the right to strike presupposes that direct negotiations between the parties regarding the matter in dispute shall have ended without success.

254. Article 79 requires that the strike should be conducted in a peaceful manner, without recourse to violence of any kind against persons or property.

255. Article 78 of the Act excludes the suspension of work in the case of activities which are essential for the undertaking and where a stoppage would pose a threat to persons, security or property, or prevent the immediate resumption of normal operation once the strike is over.

256. Article 82 stipulates that if the strike is likely to affect essential public services, or if the provisions of article 78 apply, the striking workers must guarantee that the necessary staff remain on duty to prevent the complete interruption of services and to ensure the continuity of the operations required for that purpose.

Article 9

257. The aims of the health system administered by the Peruvian Social Security Institute (IPSS) are prevention and the promotion, protection, recovery and rehabilitation of physical and mental health. Benefits are provided with a view to progressively covering the socio-economic needs of population groups, according to a set of priorities and possibilities of funding.

258. The system maintains a functional relationship with the Ministry of Health, so that benefits can be provided through its services as well as those of other institutions forming part of this sector. The benefits are adjusted periodically to help low-income groups, and cost-of-living surveys are conducted to update the information required for this purpose.

259. Minimum pensions are set in relation to the statutory minimum wage for workers in employment.

260. Social benefits are thus intended to help people realize their potential, especially through programmes of education, recreation, rehabilitation for

work, social and legal counselling, aid in social emergencies and other contingencies that may affect the individual, the family or the community, priority being given to the economically disadvantaged groups.

261. The IPSS is therefore extending its services to the marginal rural and urban population in accordance with the guidelines established for integrated services in the health sector.

262. In addition, there is a fund to support health professionals who are contributing to the development of infrastructure in these areas.

System of health benefits of the Peruvian Social Security Institute, Supreme Decree No. 029-84-PCM

263. The IPSS system establishes health-care and prevention or health promotion benefits, including cash or allowances.

264. The above Decree clearly establishes that the benefits for illness, general accident, maternity (prenatal and postnatal), industrial accidents and/or occupational disease covered by the IPSS for which persons with compulsory insurance in Metropolitan Lima and Callao are eligible will be paid directly by the employer to the workers concerned.

265. The benefits system (Decree-Law No. 22,482) covers:

(a) Health-care benefits:

Full medical and dental care, both ambulatory and in-patient;

Pharmaceuticals;

Other medical supplies;

Rehabilitation and physiotherapy;

Essential prosthetic and orthopaedic appliances;

(b) Prevention and health promotion:

Child health monitoring;

Health education;

Immunization;

(c) Cash benefits:

Daily allowance for illness or general accident;

Daily maternity allowance;

Daily breast-feeding allowance;

Burial benefits.

266. Pensioners' entitlements under Decree-Law No. 20,530 are as follows:

Disability: life-long pension (MINJUS-IPSS);

Settlement and pension;

Death of spouse: burial, mourning and settlement.

267. A worker who involuntarily finds himself unemployed will continue to receive health benefits for such period and in such form as may be decided by the Board of Directors.

Medical benefits

Social security services

268. The social security system offers extensive coverage of both ambulatory and in-patient hospital treatment for insured persons. The increasing number of pensioners is bound to strain the capacity of the present health-care infrastructure and the law therefore provides for the possibility of using other means in order to meet the requirements of the new system.

Free choice

269. Under this system, the insured person can elect to be treated by a physician or private health-care centre affiliated to the IPSS.

270. This form of coverage existed under the system of reimbursement of medical costs to the insured employee, whereas workers, pensioners and persons with optional insurance had to use the social security or contracted services. An important innovation, therefore, is the fact that the system has been made available to all insured persons, without distinction of any kind and as long as the statutory requirements are met, so that care can be provided at no cost to the beneficiary and the social security system will pay the private health-care centre or doctor directly.

271. Without this arrangement, the right of free choice would not be complete and only insured persons with financial means would be able to make use of it.

Contracted services

272. The contracted service is a different arrangement from that of free choice, because there is no requirement of affiliation; a civil agreement is concluded instead whereby the contracted entity undertakes to provide comprehensive care, with all costs charged to the social security system. Under this scheme, insured persons use the contracted service just as they would otherwise use the IPSS services.

273. Contracts have now been signed with the Ministry of Health and with a number of private clinics. In the case of the former, this enables insured persons to be treated in its hospitals.

Duration of health-care benefits

274. Health-care benefits are granted for a period of up to 12 consecutive months if sickness results in unfitness for work; after this period, the insured person can obtain an extension where authorized by the Health Benefits Administration or a body acting on its behalf, following a report by a medical assessment committee (Decree-Law, art. 20).

275. This period coincides with the term of 12 months established for cash benefits, after which the insured person may become eligible for a disability pension, in which case he can obtain health-care benefits without time-limit. The expiry of the 12 months does not mean that the insured person is left without coverage, but only that the worker's status changes from active to passive.

276. If the sickness does not incapacitate the worker, he is eligible for health-care benefits without time-limit.

Sickness benefit

277. Active contributors and persons with optional insurance are eligible for this benefit, without distinction of any kind. The entitlement has been extended to public administration employees, subject to Act No. 11,377, those same persons who, until the establishment of the present system, were subsidized by their employer for a maximum of four months with reduced pay as from the third month.

Maternity benefit

278. Article 45 of the previous Constitution stated that protection must be given to working mothers. This principle has been enshrined in the current Constitution, article 23 of which stipulates that the State shall give special protection to mothers.

279. Women who are pregnant are entitled to 90 days' leave, 45 days before the birth and 45 days after it, which, as an exception, will be reckoned as actual days' work and hence cannot be deducted from length of service. In the same way, they will be reckoned as actual days of work when holiday entitlements are calculated. They are also entitled to one hour off a day for breast-feeding during the first year of the child's life.

280. An additional benefit, and perhaps one of the most significant with regard to working mothers, is that of the crèche room, as provided for in articles 20 and 21 of Act No. 2,851. For this purpose, employers must make available, either on their own premises or on premises near the workplace, a room specially fitted out to receive and accommodate children of female employees during working hours, until they reach the age of one year. Employers must provide such crèches if they have more than 25 female employees or workers aged over 18. Mothers who place their children in these crèches

are allowed breaks totalling not more than one hour a day in order to feed them. The time it takes for the mother to reach the crèche is not taken into account. The value of this time must not be deducted from the mother's wages, regardless of the manner in which she is paid for her work.

281. Provision has also been made for a pregnant woman dismissed by her employer solely because she is pregnant to seek a court order overturning her dismissal. If the court rules in her favour, she must be immediately reinstated in her job (Legislative Decree No. 728, arts. 65 (e) and 71).

282. Maternity and breast-feeding benefits must be paid in cash. For the 90-day period before and after childbirth, the employer has to pay the maternity allowance starting 45 days before the birth and to continue the payments until 45 days after the birth, provided that the insured woman engages in no remunerated work (Decree-Law No. 22,482, art. 28).

283. It should be stressed that in Peru only one half of all births (53 per cent) are attended by professionals (doctors, obstetricians and nurses), with about 29 per cent handled by midwives or birth attendants. The remaining 18 per cent are attended by family members or other untrained persons. Professional attention during childbirth is even less frequent among uneducated women and in rural areas, where barely 18 per cent of births are attended by doctors, obstetricians or nurses. Between 1982 and 1986, there was a slight increase in the number of births attended by professionals (from 49 per cent to 53 per cent). Over the same period, in some sectors there was also a slight increase in the percentage of births attended by midwives.

Women's right to social security

284. Act No. 24,705, promulgated on 16 July 1987, provided that housewives and mothers were to be covered by social security, for which they must make a monthly payment of 5 per cent of the minimum living wage.

285. Under Decree-Law No. 22,482, female employees or workers receive maternity and breast-feeding benefits, which are payable in cash. This benefit will be granted provided that the insured woman has made at least three consecutive or four non-consecutive monthly contributions in the course of the six months preceding the probable date of birth and has been registered with the IPSS for at least nine months before the probable date of birth.

Women's right to health

286. Women's health has improved in the areas of fertility, knowledge and use of birth-control methods and certain aspects of maternal and child health.

287. Decree-Law No. 22,482, like the provisions it replaced, grants, in addition to the maternity allowance, other types of medical benefits, given that periods of unfitness for work occur before and after the birth.

288. Only insured women who are working and whose insurance is optional are entitled to this benefit, and not the wives of insured persons, or pensioners, the former because they are not automatically covered by the benefits of the

law, and the latter because during their maternity leave they continue to receive their pension (Decree-Law No. 22,482, art. 27). The qualifying period is the same as that for the other benefits.

289. The maternity allowance is granted from 45 days before the probable date of birth to 45 days after the birth, provided that the insured woman engages in no remunerated work (Decree-Law, art. 28).

290. This is how the differences in status between insured women facing the same risk have been minimized. Before Decree-Law No. 22,482 was promulgated, female workers and employees in the private sector were entitled to 42 days before and after the birth, whereas public-sector employees were entitled to 15 days before and 45 days after the birth, owing to the different regulations existing in each sector.

291. The intent of the law is to ensure that the insured woman actually rests before and after childbirth, thereby correcting the misconception that frequently accompanies the grant of the benefit; the beneficiary is in fact frequently allowed to continue working right up until the final stages of pregnancy and only after the birth does she take the time off that she did not take during the prenatal period.

292. The leave is tied to the probable date of birth, but it sometimes happens that the birth occurs before or after the date calculated by the doctor. If the birth is early, the prenatal period is reduced without any compensation for the insured woman, since she is still covered every day; if, however, the birth is late, the prenatal leave is extended, in which case the extra days are credited as sick leave and so the mother is not disadvantaged.

293. The postnatal period is always 45 days, starting from the date of the birth.

Maternity allowances

294. The maternity allowance amounts to 100 per cent of remuneration, up to the ceiling of the maximum insurable compensation. The calculation of this allowance is based on the average insurable remuneration of the last four months prior to the leave. If the number of insured months is less than four, the average is calculated on the basis of that number. This provision represents progress, as this benefit has been raised to 100 per cent of remuneration. Previously, only 70 per cent was paid.

295. Insured women with compulsory or optional insurance are entitled to the daily maternity allowance provided they have made at least three consecutive or four non-consecutive monthly contributions in the course of the six months preceding the probable date of birth and have been registered with the IPSS for at least nine months before that date.

296. The allowance is granted as from the forty-fifth day preceding the probable date of birth and continues until 45 days after the birth. If the birth occurs after the calculated date, the extra period is considered as sick leave.

297. In the case of unemployed female workers, the allowance is granted for the period established once their entitlement has been determined.

298. Entitlement to the maternity allowance is lost if the insured woman does not follow medical advice or engages in remunerated work. The right to apply for the allowance expires six months after the date on which the postnatal period ends.

299. Maternity allowances are payable to women with compulsory insurance, with the exception of civil construction workers, baker's assistants, port workers and home workers, who will receive the allowance directly from their employer. They must submit to him temporary certificates of unfitness for work issued by the IPSS.

300. Other eligible women will receive the allowance directly from the IPSS, upon presentation of the following documents:

Insurance card, valid on the date when the temporary unfitness began, or a document proving the woman's eligibility;

Certificates of temporary prenatal and postnatal unfitness for work, indicating the probable date of birth, issued or stamped by the IPSS;

Application for cash benefits, with two copies.

301. The children of insured fathers or mothers are entitled to the breast-feeding allowance. If both parents are insured, the allowance is paid only to the mother.

302. When the breast-feeding allowance is granted because the mother is insured, she must also have been entitled to the maternity allowance. If this allowance is granted because the father is the insured person, he must have made three consecutive or four non-consecutive monthly contributions in the course of the six months preceding the probable date of birth, and have been registered for at least nine months prior to that date.

303. In the case of a multiple birth, a separate breast-feeding allowance is paid for each child.

304. If a person other than the parents is responsible for the care of the child, the benefit is paid to that person, provided she can prove that the breast-fed baby is under her care.

Disability benefits

305. Disability benefits are paid on the basis of a state of prolonged or presumably permanent deterioration in the physical or mental condition of an individual which prevents him from earning a wage or salary sufficient for him and his family to live on by carrying out similar or equal work, within his own age group, sex, category, post or profession in the labour market of his region.

306. Disability arises from the prolongation of an ordinary illness or accident, although it may also result from a congenital state or old age; it most frequently results from an industrial accident or work-related illness.

307. The following categories of disability have been established:

(a) Psycho-physical disability, determined solely by the person's organic state (medical criterion);

(b) Professional disability, which links organic disability with the person's inability to continue to perform the same job or profession (fitness for work);

(c) General disability, when the individual's unfitness is total and prevents him from performing any occupation or work-related activity (earning capacity).

Categories of disability

308. For therapeutic, physical and economic purposes acceptable to social security, disability is defined as either temporary or permanent:

(a) Temporary disability is a transitory state in which, after the maximum duration of sickness (or before, according to medical opinion), the person is unable to resume his work, but has possibilities of recovery and hence needs continued health care. Most schemes fix its length at five or six years. It may end for any of the following reasons:

Patient discharged: recovery without disability;

Patient discharged: declared to be suffering from a permanent disability;

Patient discharged: after five or six years or the maximum period set has elapsed and the insured person acquires permanent disability status;

Disabled person has received retirement benefits.

(b) Permanent disability covers the situation of an insured person who, having been medically discharged, suffers from serious anatomical or functional deterioration which can be determined objectively, is not expected to vary and reduces or destroys his ability to work. There are four degrees of disability related to the worker's fitness for work:

Partial permanent unfitness for his habitual occupation;

Total permanent unfitness for his habitual occupation;

Absolute permanent unfitness for all work;

Major disability.

Industrial accident benefits

309. Workers who are the victims of an industrial accident or work-related illness are entitled to the following benefits:

(a) General and specialized medical care;

(b) In-patient and pharmaceutical care;

(c) Any necessary prosthetic or orthopaedic appliances;

(d) Re-education and rehabilitation;

(e) Cash.

310. The benefits listed in subparagraphs (a) and (b) are granted to victims of accidents or illnesses until they have fully recuperated or until unfitness is declared to be permanent.

311. The benefits cited in subparagraphs (a), (b), (c) and (d) are granted by the National Workers' Social Security Fund at its care centres or at centres specified by it (Decree-Law No. 18,846, arts. 7 and 8).

312. Cash benefits owed under the industrial accident and work-related illness insurance are granted in an amount equivalent to that currently payable and that provided for in the relevant collective agreements and by any changes or increases stipulated by the Decree-Law's regulations, for the following:

(a) Temporary unfitness;

(b) Permanent unfitness;

(c) Death.

313. The benefits referred to in article 7 of the above-mentioned Decree-Law are granted once the worker's condition has been verified, no qualifying period being required. The benefits are subject to an evaluation of the different types of unfitness and to the guidelines set out in the Decree-Law's regulations, which will also contain a list of sicknesses causing unfitness (Decree-Law No. 18,846, art. 10).

314. Failure to pay contributions promptly renders the person concerned responsible vis-à-vis the Social Security Institute for payment of the cost of any care that might be necessary if a work-related accident or illness occurs during the period when such contributions were not paid.

Entitlement to health-care benefits

315. The following are entitled to health-care benefits:

(a) Persons with compulsory insurance;

(b) Persons with optional insurance;

(c) Uninsured wives who are the dependants of persons with compulsory or optional insurance, and totally or permanently disabled husbands who are dependants of wives with compulsory or optional insurance;

(d) The children of persons with compulsory insurance.

Daily allowance for ordinary sickness and/or accident

316. Persons with compulsory or optional insurance who are temporarily unfit for work and who have made at least three consecutive or four non-consecutive monthly contributions in the course of the six calendar months prior to the month in which the unfitness began are entitled to this allowance, except in the case of an ordinary accident, when it is sufficient that the worker should be insured. In the case of insured persons with optional insurance, if at the time of the accident they had a labour relationship with an employer, in order to receive ordinary accident allowances they must have made at least one contribution in the course of the six calendar months prior to the month in which the accident occurred. Pensioners are not entitled to the ordinary sickness or accident allowance.

317. The amount of the allowance is determined by dividing by 30 the normal insurable remuneration for the month in which unfitness began. This remuneration is what the worker is entitled to receive by law or under a collective agreement during the calendar month when the temporary unfitness for work begins. If the normal monthly remuneration is not determined by law or collective agreement, its amount will be calculated on the basis of the average insurable monthly remuneration for the three consecutive or four non-consecutive months of the qualifying period cited in article 18 of Decree-Law No. 22,482.

318. This allowance will be paid directly by the employer and will be equal to the total amount of remuneration the worker is entitled to receive for the period in question.

319. The IPSS will pay the allowance only during the first months of unfitness in the case of insured persons who, at the time of the ordinary sickness or accident, had no employer but were nevertheless eligible for benefits.

320. The maximum period during which the allowance is payable depends on whether it is consecutive or not consecutive:

(a) Eleven months and 10 days if the period is consecutive;

(b) Eighteen months in the course of 36 calendar months if the periods are not consecutive.

321. Entitlement to this allowance is lost if, at the end of the six months starting from the date on which unfitness ended, the insured person engages in remunerated work or fails to follow medical advice.

322. Sickness and/or accident allowances are payable to:

(a) Persons with compulsory insurance, with the exception of civil construction workers, baker's assistants, port workers and home workers, who will receive the allowance directly from their employer. They must submit to him certificates of temporary unfitness for work issued or stamped by the IPSS.

(b) Other insured persons will receive the allowance directly from the IPSS, upon presentation of the following documents:

Benefits application form;

Insurance card, valid on the date when the temporary unfitness began, or a document proving the insured person's eligibility;

Certificate of temporary unfitness for work, issued or stamped by the IPSS (sick leave);

The worker's four most recent sworn statements and proof of regular payments to the IPSS.

Unemployment benefits

323. Unemployment is the socio-economic situation of persons who, while possessing the necessary ability to perform particular work, are unable to do so, who lose their jobs through no fault of their own, or whose normal working time is reduced by one third or more, with a consequent loss or reduction of income.

324. When the data are disaggregated by sex, it is apparent that unemployment rates are practically the same for men and women in the cities, except for Metropolitan Lima, where there is a significantly higher percentage of unemployed women.

325. The changes reported in the period between censuses indicate that while the urban unemployment rate for women fell slightly between 1981 (9.9 per cent) and 1993 (8.21 per cent), the rate for men increased from 5.3 per cent in 1981 to 8.6 per cent in 1993.

326. In terms of urban unemployment, the impact of the economic crisis and the Adjustment Programme seems to have been greater on men than on women. It should be pointed out that if women begin to work as own-account workers or unremunerated family workers as opposed to manual or clerical workers, they will not appear as unemployed because they are not seeking a job with a wage.

327. Unemployment rates for Metropolitan Lima have not levelled off to the same extent as at the national level. According to the data available, the rates went from 5 per cent for men and 11 per cent for women in 1981 to 8.3 per cent and 12.2 per cent respectively.

328. Social security provides allowances for total unemployment and partial unemployment, which make up for the income-generating capacity of employment and ensure the payment of the employer's and worker's contributions for as long as the coverage lasts.

Nature and scope

329. The following conditions must be fulfilled:

(a) The worker must be physically and mentally able to work since, if he is unfit for work due to sickness, disability or old age, he may be eligible for other benefits provided by social security;

(b) Unemployment must be due to causes beyond the worker's control, in other words, he must not have been dismissed as a result of his own action, as would be the case for those who voluntarily stop working to go on strike, those who have resigned in order to look for a better job, and those who have no regular job (vagrants, drug addicts and the like);

(c) The unemployed person must be available to work immediately in a job in a similar category and with similar remuneration to those of his normal job. This means that if the worker is engaged in own-account work, or is working in another job with lower pay or shorter hours and cannot immediately accept the new job, he will not be eligible for benefit;

(d) In all cases the person concerned must be in a subordinate capacity.

330. Many people, including the following groups, are unaware of the benefits for which they are eligible through the IPSS:

Peasants living far from a city;

Persons living in remote areas, for example, near the borders or in the jungle (indigenous people), who do not receive any support;

Maids and home workers (seamstresses, tailors, etc.).

331. The social changes and advances achieved in the sphere of employment have barely begun to affect this huge sector of workers who have been ignored, not to say marginalized, in Peru and in the legislation of a number of other countries, as regards the implementation of the right to work and social security.

332. As far as women are concerned, housewives are beginning to be eligible for health and retirement benefits as long as they make contributions commensurate with calculated assets.

333. There are serious shortcomings in the labour system with regard to uninsured own-account workers or informal-sector workers (such as street vendors).

Burial benefits under Decree-Law No. 22,482

334. Burial benefits are granted in respect of insured persons who, until the date of their death, had been eligible for health-care benefits. Burial benefits are paid to persons who prove by means of the appropriate invoice, that they have paid the costs in question. The amount of reimbursement is based on the invoice and may cover up to five times the minimum monthly insurable remuneration as of the date of death. After the insured person's death, entitlement to the burial benefit terminates six months after the date of death.

335. The burial benefit is paid directly by the IPSS, upon presentation of the following documents:

(i) Insurance card of the deceased insured person, valid on the date of death, or a document proving the insured person's entitlement to health-care benefits on the date of his death;

(ii) Medical certificate of death or duly authorized photocopy;

(iii) Death certificate (original);

(iv) Invoice for burial costs;

(v) Application form for cash benefits (original and two copies);

(vi) Burial plot certificate (copy);

(vii) Decision on pension rights (copy);

(viii) The three most recent payment coupons up to the date of burial (originals);

(ix) Copy of the beneficiary's voter registration card;

(x) Burial registration number; if there is none, it should be requested from the Posthumous Registration Office.

Article 10

336. The family may be envisaged in two ways, either over a period of time (evolution) or at a given moment in its development (current state). From the first standpoint, the family is a historical category, in other words, a social phenomenon based on marriage and parenthood, whose composition, forms, functions and types of relationship vary at every stage of its social development and depend on a series of factors, primarily the socio-economic conditions of its existence and development.

337. From the second standpoint, and the one that most interests us, that of its current state, the "family" may be defined as a union consisting of two individuals of different sexes and their children who live in a common dwelling under the authority of both parents, are related by blood to their

forebears, descendants and other relatives and to other relatives by marriage, and constitute the human physical and genetic group par excellence.

338. The family is a community based on marriage, free and equal as to rights, united by kinship, and mutually linked by personal and property relationships, material and moral support, and spiritual affinity.

339. The Peruvian Constitution and Civil Code do not contain a definition of the family, but it manifests itself as a legal and social institution which comprises a group of individuals, primarily parents and children, who are united by kinship and in the eyes of the law.

Family-planning institutions

340. These institutions provide family-planning information, advice, training and services; they do not necessarily have a gender perspective.

341. At the national level, a number of NGOs are concerned with family planning. A distinction may be made between those which advocate only natural methods and are associated with the Catholic Church, and those which promote all contraceptive methods. Of the latter, the following are particularly noteworthy owing to their diversity of services and coverage:

(i) Population Programmes Support (APROPO): NGO founded in 1983. It currently covers the entire country and develops programmes for the media (radio, television and the press), social marketing programmes (promotion of contraceptive products and methods, primarily pills) and a telephone advice service.

(ii) Peruvian Institute for Responsible Parenthood (INPPARES): NGO founded in 1976. It offers family-planning services and carries out research, education, training and information activities; it covers Lima and several departments in the interior.

(iii) Population and Gender Studies and/or Education: As a special mechanism for academic research on gender studies, the Catholic University Department of Social Sciences offers a Diploma in Gender Studies (DEG), a programme which provides various areas of professional training.

342. Among the other institutions active in the field of research and education on population and gender are the following:

(i) The Continuing Seminar on Gender Studies; its goal is to promote research and academic discussion on gender perspectives. It functions under the auspices of the Peruvian Association for the Advancement of Social Sciences (FOM. CIENCIAS);

(ii) The Multidisciplinary Population Research and Teaching Association (AMIDEP), founded in 1977, works to promote teaching, research, training and communication in the field of population studies. It publishes a regular bulletin;

(iii) The Andean Institute for Population and Development Studies (INANDEP), founded in 1980, carries out theoretical and applied research on population and its development;

(iv) Institute for Population Studies (IEPO), established in 1984, carries out research, training and service activities in the field of family planning. It is part of Cayetano Heredia University.

Marriage

343. The Constitution sets the age of majority at 18, in accordance with article 42 of the Civil Code, which establishes full capacity for the exercise of civil rights.

344. As a signatory to the Pact of San José, Costa Rica, and a party to the Declaration of Human Rights, Peru guarantees the right of men and women to marry with their full and free consent and to found a family. All men and women who are of age therefore have the right to marry and found a family without any restriction on grounds of race, nationality or religion, since it is recognized that men and women have the right to enter into marriage. Because of the importance of marriage to society, not only compliance with the essential requirements but also strict observance of the formalities established by law are prerequisites for its solemnization.

345. According to the traditional view, the solemnization of marriage must take place at a particular point in time; it therefore constitutes a solemn, personal and exclusive legal act by which the mayor declares that the persons who have undertaken to marry are husband and wife.

346. Nevertheless, our Constitution and family law establish impediments or limitations to marriage which impinge on the free consent of the parties.

347. The Constitution maintains, strengthens and protects the family in Title I, Chapter II, on social and economic rights. What is established by the Constitution is legally reinforced in Book IV of the Civil Code.

348. Article 45 of the previous Constitution described the protection to be given to working mothers. This principle has been recognized and is stated in article 23 of the current Constitution, which stipulates that the State must provide special protection to working mothers.

349. Women who are pregnant are entitled to 90 days' leave, 45 days before the birth and 45 days after it, which, as an exception, will be reckoned as actual days of work and hence cannot be deducted from length of service and shall be used to calculate leave entitlements. Working mothers also have the right to one hour's time off per day for nursing during the first year of the child's life.

350. An additional benefit, and perhaps one of the most significant with regard to working mothers, is that of the crèche room, as provided for in articles 20 and 21 of Act No. 2,851. For this purpose, employers must make available, either on their own premises or on premises near the workplace, a room specially fitted out to receive and accommodate children of the female

employees during working hours; until they reach the age of one year. Employers must provide such crèches if they have more than 25 female employees or workers over the age of 18 (Supreme Decree, art. 26, of 25 June 1921). In addition, mothers who place their children in these crèches are allowed breaks totalling not more than one hour a day in order to feed them. The time it takes for the mother to reach the crèche is not taken into account. The value of this time must not be deducted from the mother's wages, regardless of the manner in which she is paid for her work.

351. Provision has been made for a pregnant woman dismissed by her employer solely because she is pregnant to seek a court order overturning her dismissal. If the court rules in her favour, she must be immediately reinstated in her job (Legislative Decree No. 728, art. 65, para. (e) and 471).

Article 11

352. Macroeconomic imbalances and the decrease in family incomes and in State social services spending have led to a decline in the population's standard of living. During the past 10 years, efforts have been made to reduce poverty, since it is a structural phenomenon which reflects institutional, economic, social and political factors. One of the most harmful factors is the economic crisis, which we have gradually been overcoming; but the fact remains that it is impossible to support oneself without some kind of work. Necessary measures have been taken to strengthen action to combat this crisis.

353. In 1991, 54 per cent of the Peruvian population were living below the poverty line, the rural Sierra being the most seriously affected area (68 per cent). Population distribution by area also shows a higher percentage of women in the rural departments (women account for 51 per cent of the total population living in extreme poverty); these women also have high fertility rates.

354. The overall fertility rate is 4.5 children per woman, the infant mortality rate is 88.2 per 1,000 and life expectancy at birth is 61.4 years.

355. Self-managed strategies in the fight against poverty include soup kitchens, in which there is a high level of participation by women, since the decreased availability of public resources (State social services spending), and therefore of family income, has made it harder for women to care for their homes and families. Soup kitchens thus provide an alternative in areas of extreme poverty.

356. An estimated 60 per cent of the Peruvian population are in the lowest income bracket, with an average monthly income of US$ 15.50 per person. On the other hand, 29 per cent of the population are in the highest income bracket, with an average income 24 times higher than that of the lowest group.

357. One socio-economic factor is high demographic concentration, which has an impact on the national economy. Lima and the province of Callao alone account for 32.1 per cent of the population, generating 44 per cent of GDP while occupying only 2.6 per cent of the country's land area.

358. The lowest average per capita monthly incomes are found in the rural areas of the Sierra, where the poorest departments are: Apurímac, Huancavelica, Ayacucho, Cuzco, Cajamarca and Puno, which account for one fifth of the population.

359. At present, the country's population is predominantly young; in 1991, 40 per cent were under the age of 15, 56 per cent were aged between 15 and 64, and 4 per cent were over 65.

360. The Peruvian Government is aware of the serious difficulties faced by many young people and of the need for structural changes in society. However, real improvement in the labour situation must be based on the contents of the Convention on the Rights of the Child and other international human rights instruments.

361. In the face of the economic crisis and the crisis in values from which our society is currently suffering, the Peruvian family is confronted with extremely difficult situations, including poverty and violence. However, governmental and non-governmental institutions are working to humanize, protect and recognize the rights of children and adolescents, in accordance with the above-mentioned instruments.

362. The obligation to improve the situation of children is a priority since Peru has a high infant mortality rate and over 70 per cent of children are poor. Poverty is at alarming levels in rural areas, particularly Huancavelica, Cuzco, Apurímac, Ayacucho, Puno and Cajamarca.

363. For this reason, the exploitation of children in the workplace is a major concern. Under the Children's and Adolescents' Code, therefore, any child over 12 years of age has the right to work. This means that he is also entitled to social security, to register with the Ministry of Labour and to have a registration booklet if he begins working on his own account. The old system under which children were protected only in an employee relationship, in other words, in a state of dependence, has thus been abandoned.

364. The laws currently in force protect street children, who are also considered workers. The Code recognizes the situation of abandonment and vulnerability in which these children find themselves and attempts to give them legal protection.

365. It is not only the Children's and Adolescents' Code that protects working minors. Article 23 of the Constitution states that work shall be given priority attention by the State, which affords special protection to working minors. The text of the Constitution thus includes normative principles that offer a framework of protection to working children and adolescents.

366. It should be emphasized that, although the right of all adolescents to work is established, article 32 of the Convention on the Rights of the Child stipulates that States parties must recognize the right of the child to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

367. In this regard, the Children's and Adolescents' Code, recognizing the provisions of the Convention, has established that every adolescent has a right to work subject to the applicable restrictions, in other words, provided that the work does not constitute a threat or danger to his physical, mental and emotional development.

The right to adequate food

368. The right to food is guaranteed by the Government's social services policy for the neediest sectors of the population and is implemented through public and private institutions.

369. In the private sector, of particular importance is the work of the NGOs devoted to the promotion and protection of the rights of children and adolescents.

370. For example, with the support of these organizations, in December 1990 the Central Office for Soup Kitchens secured the promulgation of Act No. 25,307 creating the support programme for food projects run by the grass-roots social organizations. This Act commits the State to subsidizing at least 65 per cent of the cost of the food provided by these organizations through the soup kitchens and "glass of milk" committees.

371. It is estimated that in 1994 Metropolitan Lima alone had some 15,000 organizations such as soup kitchens, "glass of milk" committees and mothers' clubs. These organizations in fact exist throughout the country. The food programme is implemented through popular organizations such as mothers' clubs, soup kitchens and "glass of milk" committees. They all undertake collective food purchase, preparation and daily distribution in order to reduce the cost of feeding a family. Women play an active part in these activities, which enable them to reduce the time spent on housework and offer possibilities for socializing, training and, in some cases, earning an income.

372. There are at least 20,000 self-managed organizations with an average membership of 20 women. Clearly, therefore, popular organizations play an important role in dealing with food-related problems, particularly in the neediest regions of the country; their work is recognized by society and the State.

373. Each type of organization has its own forms of central administration and metropolitan, provincial or departmental representation. However, there is no single body in which they are all represented.

374. Women's organizations play a fundamental role in popular food programmes. In 1990, the "glass of milk" committees served over 1 million people in Lima and 2.6 million people nationwide, in other words, 8 per cent of the total population.

375. In 1991, soup kitchens in Metropolitan Lima prepared and distributed 570,000 daily rations (1991 CARE soup kitchen census), assisting 8.5 per cent of all families and 13 per cent of poor families (Ministry of Labour, 1992 Metropolitan Lima household survey).

376. Both the soup kitchens and the "glass of milk" committees were invited by the last two Governments (1985-1990 and 1990-1995) to participate in emergency programmes in order to provide assistance to the families most affected by the economic crisis and adjustment policies.

377. Recently (June 1994), the organizing committees of the self-managed soup kitchens signed an agreement with the Food Assistance Programme (PRONAA) ensuring that all self-managed soup kitchens receive a share of the food distributed.

378. Of particular importance among the State-run organizations is the work of the National Family Welfare Institute (INABIF), an organization which specializes in children and families and is responsible for several public institutions for abandoned minors, and the Institutional Teenage Mother Programme, which provides assistance and protection to abandoned teenage mothers and their children.

379. According to official statistics, in 1992 INABIF provided assistance to 16,000 abandoned children through new programmes for, inter alia, adoption, foster homes and teachers for street children. Assistance programmes for what UNICEF calls children in especially difficult circumstances, a broad and complex category in Peru, are currently being expanded.

380. It is important to note the development of the Wasa Wasi (a Quechua term meaning "children's home") Programme, which currently provides community services for the care, feeding and nutrition of the children of working mothers.

381. Another noteworthy organization of this type is the Working Group on Agriculture and Food, the goal of which is to help to feed poor families.

382. The above paragraphs convey the State's concern for the development of short and medium-term programmes and policies to ensure that the right to adequate food is not neglected in the country's neediest sectors.

Article 12

383. In accordance with the guidelines set forth in the Covenant, Peru recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. To this end, steps have been taken to achieve the full realization of this right, including the following:

(a) The reduction of the stillbirth rate and of infant mortality in order to achieve the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which will ensure that all people have access to medical care and services in the event of sickness.

384. The right to health is enshrined in article 7 of the current Constitution, which states: "Everyone has the right to the protection of his own health and that of the family and the community, and also the duty to contribute to its promotion and protection".

385. A national health policy has also been established, as stipulated in article 9 of the 1993 Constitution, which also states that it is the State which shall determine this policy at the national level.

386. The Executive is the organ responsible for regulating and supervising the implementation of this policy and for the pluralistic and decentralized design and implementation of a health policy to which everyone has equitable access.

387. Health is thus one of the most important social factors in the welfare of a country since it has a decisive influence on the intellectual and physical capacities of the country's inhabitants.

388. An evaluation of the level of mental and physical health of the population entails not merely defining mental health as the absence of mental illness, but also taking into account other psychological factors, including self-esteem and the capacity to lead a productive life, to integrate with one's environment, to participate democratically in national decision-making, to establish lasting interpersonal relationships, and to work and compete on equal terms with others. Physical health has as much influence on a person's psyche as on his physical condition as such.

389. Children are the first to reflect a deterioration in a country's health conditions, and so it is important to monitor constantly this segment of the population. The infant mortality rate is the best reflection of a community's living conditions.

390. As for other segments of the population, the situation of women, in particular, has changed with regard to fertility, familiarity with and use of contraceptive methods, and other indicators of maternal and child health.

391. Nevertheless, there are striking inequalities between women, depending on their social status. For the period 1990 to 1995, life expectancy in Peru was 66.6 years for women and 62.7 years for men.

392. In view of this situation, it must be borne in mind that State spending in the health sector accounted for only 0.31 per cent of GDP in 1991, compared with 1.12 per cent in 1980. This budgetary restriction affected the development of various health programmes and the adequate equipment of public institutions.

393. In 1991, the Government set up the National Compensation and Social Development Fund (FONCODES), one of the principal programmes devoted to the alleviation of extreme poverty. In 1992, this Fund allocated 7 per cent of its resources (12.2 million new soles) to health programmes. Most projects in this field have been devoted to the construction of health clinics and the improvement and/or expansion of health centres (61 per cent). However, equipment (furnishings and medication) has not been taken into account and has been concentrated in the capital.

Children's health

Infant mortality

394. With an infant mortality rate of 77 per 1,000 live births in 1992, Peru is one of the most disadvantaged countries in the Americas.

395. To be specific, the 1992 infant mortality rate was 58 per 1,000 nationwide, with about 44 per 1,000 in urban areas and 82 per 1,000 in rural areas.

396. Conditions originating in the perinatal period are the primary cause of death among children under one year of age and accounted for 33 per cent of infant deaths in 1990-1991. This figure may be explained by the low incidence of care by health professionals during pregnancy and childbirth in the interior of the country (57 per cent and 43 per cent of births respectively, excluding Metropolitan Lima).

397. The infant mortality rate is about 62 per 1,000 live births for boys and 53 per 1,000 live births for girls.

398. Broken down by regions, the infant mortality rate (children under the age of 5) is 38 per 1,000 live births for Metropolitan Lima, 78 per 1,000 for the rest of the coastal region, and 116 per 1,000 for the Sierra and Selva regions.

399. Broken down by levels of urbanization, the rate is 38 per 1,000 live births in Metropolitan Lima, 82 per 1,000 in other large cities such as Arequipa, Trujillo, Chiclayo, etc. (department capitals), 79 per 1,000 in other, smaller cities and 131 per 1,000 in rural areas.

Basic health needs

400. The basic problem which affects the greatest number of households is the lack of sewage services. According to the 1993 census, 37.8 per cent of all families (1,801,000 homes) live in dwellings without any type of sewer. This situation affects 7,954,000 people nationwide.

401. The relevant census question has made it possible to identify households which have no system for sewage removal, not even a pit latrine or cesspool. They are, therefore, more exposed to poor hygiene which threatens their health and their lives, and especially those of their children.

402. The lack of sewers is most critical in rural areas, where it affects 76.6 per cent of households (93,000 households or 4,941,000 people). The problem affects 708,000 households or 3,013,000 people in urban areas (21.2 per cent of all urban households).

403. The diseases most commonly causing death among children under the age of 15 are infectious intestinal diseases such as cholera and acute diarrhoea, tuberculosis, diseases preventible by vaccination such as diphtheria, whooping cough and tetanus, and other infectious and parasitic diseases. For further information, see the attached statistics.

Women's health

Maternal mortality

404. In 1993, Peru had a maternal mortality rate of 261 per 100,000 live births, a significant number in view of the fact that in 1981 the rate was 321 deaths per 100,000 live births. In other words, there has been a 19 per cent decrease.

405. Uneducated women have the highest maternal mortality rates: 489 deaths per 100,000 live births, which is 10 times higher than for women with higher education (49 per 100,000) and even higher than the national rate 10 years ago.

406. The principal causes of maternal mortality are interruption of unwanted pregnancies and childbirth accompanied by inadequate medical care (haemorrhage, infection or hypertension).

407. According to studies carried out in the marginal districts of the capital (Lima), septic abortions were the primary cause of maternal mortality in 1986 and 1988 (Ministry of Health, 1986 and 1988). Another national study, carried out in 1985, showed that abortion was the second cause of maternal mortality (22 per cent). In 1989, 43 abortions were performed for every 100 live births, a total of 271,000 abortions per year. This means that about 5.2 per cent of Peruvian women between the ages of 15 and 49 have had an abortion at some point in their lives.

408. In Peru, only half of all births (53 per cent) are attended by professionals (doctors, obstetricians, nurses), with about 29 per cent handled by midwives or birth attendants. The remaining 18 per cent are attended by family members or other untrained persons. Professional attention during childbirth is even less frequent among uneducated women and in rural areas, where barely 18 per cent of births are attended by doctors, obstetricians or nurses. Between 1982 and 1986, there was a slight increase in the number of births attended by professionals (from 49 per cent to 53 per cent). Paradoxically, over the same period, in some sectors there was also a slight increase in the percentage of births attended by midwives.

409. Of all types of death among women, maternal mortality is the greatest sign of inequity in women's health. At 300 per 100,000 live births, a figure which fails to convey the enormous differences in levels of education between urban and rural regions and in levels of poverty, it is among the highest in Latin America.

410. The social implications of maternal mortality have repercussions for the family and for society because of the crucial role of women in these two areas, both in their capacity as mothers and through their degree of involvement in social services.

411. Another cause of maternal mortality is cervical cancer, which is associated with women's reproductive role. It should be noted that this type of cancer also affects women who have not had children.

412. The Ministry of Health is the department responsible for coordinating action at the national and local levels with other sectors (Education, Labour, Justice, National Police, INABIF, PRONAA, CARITAS, NGOs) in order to achieve broader national coverage and to improve the overall health of individuals at all stages of life, recognizing their specific needs at each of those stages.

Preventive measures

413. Some of the strategies proposed to reduce mortality in children under five years of age are:

Increasing the efficiency of health institutions during the first stage of perinatal care;

Increasing the immunization rate for children under one year of age to 100 per cent;

Achieving 100 per cent eradication of diseases preventible by immunization.

414. With regard to the prevention and remedy of nutritional deficiencies, the goals are:

To reduce the rate of chronic malnutrition and nutritional deficiency in boys and girls under five years of age;

To expand coverage for health care and for growth and development monitoring during childhood;

To improve the detection and treatment of tuberculosis.

415. The State is responsible for women's overall health, including reproductive, mental and occupational health. With regard to the causes of morbidity and mortality, the goals are:

To reduce the maternal mortality rate to less than 150 per 100,000 live births by the year 2000;

To improve the quality of health care for pregnant women;

To expand anti-tetanus vaccination coverage to at least 90 per cent of pregnant women by the year 2000, and to set up a reference and cross-reference system for women at risk, bearing in mind the problems of physical, economic and socio-cultural accessibility;

To provide training in prenatal care to professionals and non-professionals and to community representatives in the areas of influence of service networks.

These are only a few of the proposed strategies for improving health standards in Peru.

Article 13

416. Economic and social rights, and specifically the right to education, are proclaimed in articles 13 to 19 of the Constitution.

417. Article 13 states: "The purpose of education is the full development of the human person. The State recognizes and guarantees freedom of education. Parents have the duty to educate their children and the right to select schools and to participate in the educational process."

418. Under article 14, "Education promotes knowledge, learning, and practice of the humanities, science, technology, the arts, physical education and sports. It prepares for life and work and encourages solidarity."

419. "It is the duty of the State to promote the country's scientific and technical development."

420. "Education in ethics and civics and teaching of the Constitution and human rights are compulsory throughout the educational process, whether civil or military. Religious education is provided with respect for freedom of conscience."

421. "Education is provided, at all levels, with due respect for constitutional principles and for the objectives of the educational institution in question."

422. "The mass media must cooperate with the State in education and in moral and cultural training."

423. As laid down in the Constitution, of all the social processes education is of the greatest importance to, and has the greatest influence on, human development, and of course on the future of children and young people. Innovations in science, technology and social organization, and expectations of greater social equity, entail major efforts to improve the coverage and quality of educational services, priority being given to those that focus on children, so as to reduce illiteracy and enable all children to complete primary education before age 15.

424. As to the characteristics of the education system, it should be made clear that it is decentralized. The State coordinates education policy; it formulates the general guidelines for curricula (yearly educational programmes), and the minimum organizational requirements of educational establishments; it oversees their implementation and the quality of education. As stipulated in article 16, paragraph 3, of the Constitution, it is the duty of the State to ensure that no one is prevented from receiving an adequate education on account of his economic circumstances or mental or physical limitations.

Education and the actual situation in Peru

425. Current indicators on education show a significant narrowing of the difference between male and female access to education; however, the gap between urban and rural areas has widened appreciably.

Illiteracy

426. Among children aged 10 to 14, who should be finishing primary school, 54 out of every 1,000 can neither read nor write. The situation is even worse in rural areas, where 75 per cent of illiterate children live.

427. In the period 1990 to 1992, 70 per cent of the population aged 3 to 24 were enrolled in an educational establishment or programme. Among minors aged 3 to 17, 81 per cent were enrolled in, or attending, school, including 48 per cent of children aged 3 to 5 and 90 per cent of those aged 6 to 17. Despite these apparently high levels of enrolment, some 1.5 million children were still not in school. The situation is worst in the departments of Cajamarca (31 per cent), Piura (28 per cent), Huánuco (27 per cent), Huancavelica (26 per cent) and Amazonas (24 per cent).

428. It should be stressed that many children are forced to leave school to work, thereby contributing to the family income. While other children combine study with work, there are some (11 per cent) who neither study nor work, these being the high-risk group. Ninety-six per cent of minors aged 6 to 17 have completed some primary school grades; and 31 per cent some secondary grades. Naturally, children in urban areas reach higher grade levels, and there is no perceptible difference between boys and girls.

429. Compounding the high drop-out rate among children is the fact that illiteracy is quite serious among women: there are currently 1,297,168 illiterate women who constitute 73 per cent of all illiterates, making illiteracy in Peru primarily a women's problem. About 18.3 per cent of women are illiterate, while the rate for men (7.1 per cent) is significantly lower. The differences among women by area of residence are still considerable: whereas in urban areas 10 women out of 100 are illiterate, in rural areas the proportion is 43 per cent.

430. Between 1981 and 1993, the female illiteracy rate fell by 7.8 percentage points. The differences between men and women lessened in urban areas. But in rural areas which are very backward educationally and where there is still specific resistance to, or difficulties with, education for women, even though the gap has lessened, it is still significant (17 per cent of girls, as opposed to 42.9 per cent of boys, attend school). In absolute terms, for the 12 intercensal years there were 17,000 fewer illiterates, which represents a 1 per cent decrease.

431. It is noteworthy that the number of illiterates in urban areas has increased by 86,000 or about 20 per cent. In 1981, 429,000 illiterate women lived in urban areas, whereas in 1993 the figure was 515,000. On the other hand, the number of illiterate rural women declined by some 12 per cent, or 103,000 in absolute terms.

432. On balance, the illiteracy problem seems to have shifted somewhat towards the cities and towns, a fact which may be related to the migration from, and depopulation of, rural areas resulting from terrorist violence.

Educational level reached

433. With an average 6.2 years of schooling in 1991, women's educational levels still differ from those of men, half of whom have completed at least 7.5 years of schooling.

434. After reviewing the available data by sex and age groups, the greatest difference between the sexes in educational achievement appears to be in the 40 to 44 age group. This is consistent with the idea that, when national education "took off" in the 1950s, it was among boys that school attendance first increased. Prior to that, among the older generations there was what might be called a certain degree of inequity. School attendance has been much more equal among the generations born since the 1970s. The average educational levels reached by children and young people are similar for both sexes.

435. Among the female population, it is women in the 20 to 34 age group who have achieved the highest levels of education, half of them having completed at least 11 years of schooling.

Problems with the quality of education

436. The climate of violence that existed from 1980 onwards significantly jeopardized possibilities of maintaining, on a day-to-day basis, the stable conditions that schools require to function. During the most trying years of the war, from 1982 to 1984, in the departments of Ayacucho, Apurímac and Huancavelica the number of children enrolled in primary schools dropped in absolute terms.

437. Worsening poverty levels affected continued school attendance. It is estimated (based on official Ministry of Education sources) that drop-out rates at the primary and secondary levels, which had been falling until 1990 (6.2 per cent and 7.3 per cent respectively), rose in 1991 (11.5 per cent and 11.0 per cent), the year after the start of structural adjustment. Nevertheless, according to the latest Ministry of Education data, the downward trend seems to have resumed in 1993. Drop-out rates for primary and secondary schoolchildren that year were 3.5 per cent and 5 per cent respectively. Another problem related to the quality of education, repetition, is causing some concern; according to the same source, in 1993 the repetition rate for primary schoolchildren was 21.87 per cent and for secondary schoolchildren 15.68 per cent.

438. What also stands out in the history of national education over the past decade has been the impoverishment of State schools, the decline in teachers' salaries, the deprofessionalization of teachers, and the consequent deterioration in educational standards; the effects are even more serious in so far as they have been accompanied by the increasing poverty of families. Since 1993, however, the Government, through the Ministry of the Interior - specifically the National Educational Infrastructure and Health Institute (INFES), has set up new schools in marginal urban areas and in the various provinces.

Education of children and adolescents, 1992

1.	Total enrolment (thousands)	7 665
2.	Total enrolment by level (%)	100.0
	Early	10.8
	Primary	51.3
	Secondary	24.9
	Higher	9.6
	Other types of education	3.4
3.	Total enrolment by type (%)	100.0
	In school	95.6
	Not in school	4.4
4.	Enrolment of minors (thousands)	6 386
5.	Total enrolment of minors as a percentage of total enrolment (%)	83.3
6.	Enrolment of minors by level (%)	100.0
	Early	12.9
	Primary	60.4
	Secondary	26.7
7.	Schooling rate by age group (%)	
	Total: 3-24 years	70.0
	3-5 years	48.7
	3-17 years	80.8
	6-17 years	89.4
8.	Student-teacher ratio for minors, by level	
	Early	24.6
	Primary	28.9
	Secondary	19.7
9.	Distribution of enrolment by minors in primary education, by grade (%)	
	First grade	23.3
	Second grade	18.5
	Third grade	16.9
	Fourth grade	14.8
	Fifth grade	13.4
	Sixth grade	13.0
10.	Children unable either to read or write in each age group (%)	
	6-9 years	34.3
	10-14 years	5.4
	15-17 years	2.6
11.	Minors aged 6-17, by level of education completed (%)	
	No level	4.1
	Primary	64.3
	Secondary	30.8
12.	Average level of education (years completed)	
	10 years	3.3
	14 years	6.7
	17 years	8.9

Source: Ministry of Education, INEI PERU Statistics 1992-1993.

Registered deaths among children under the age of 15, by cause of death, 1990-1991

	Cause	Total	
		1990	1991
	TOTAL	20 049	18 538
1.	Infectious intestinal diseases	2 600	2 816
	1.1 Cholera	0	248
	1.2 Other	2 600	2 568
2.	Tuberculosis	220	191
3.	Diseases preventible by vaccination	226	195
	3.1 Diphtheria	1	0
	3.2 Whooping cough	96	93
	3.3 Tetanus	17	7
	3.4 Acute poliomyelitis	2	2
	3.5 Measles	23	21
	3.6 Neonatal tetanus	87	72
4.	Other infectious and parasitic diseases	679	527
5.	Malignancies	185	244
6.	Diseases of the endocrine glands, metabolism and immune disorders	903	483
7.	Nutritional deficiencies	1 381	980
8.	Diseases of the blood and hematopoietic organs	103	105
9.	Diseases of the circulatory system	500	443
10.	Acute respiratory infections	5 017	4 584
11.	Other respiratory illnesses	915	858
12.	Diseases of the digestive tract	303	293
13.	Congenital anomalies	381	486
14.	Conditions arising during the perinatal period	4 165	3 659
15.	Trauma and poisonings	843	853
16.	Other causes	1 628	1 821

Article 14

439. Peruvian legislation, specifically article 17 of the Constitution, stipulates that "early, primary and secondary education are compulsory. In State schools, education is free of charge. In the State universities the Government guarantees free education to those students who maintain an adequate standard but lack the means to defray the cost of education".

440. Since the compulsory nature of primary education has been permanently established in our legislation, our State may be said to have fulfilled the international requirements laid down in the Covenant.

441. Concerning the current state of Peruvian education for children and adolescents in primary or basic education, it may be said that in general the education indicators show an improvement over recent decades, with a significant narrowing of the difference between the sexes, although the gap between urban and rural areas has widened.

442. Among children aged 10 to 14, who should be finishing primary school, 54 out of every 1,000 can neither read nor write; the situation is even worse in rural areas, where 75 per cent of illiterate children live, and girls continue to be slightly worse off. The highest proportion of illiterate children is to be found in the regions of Libertadores Wari, Inka, San Martín and Loreto.

443. In the period 1990 to 1992, 70 per cent of the population aged 3 to 24 were enrolled in an educational establishment or programme. Among minors aged 3 to 17, 81 per cent were enrolled in, or attending, school, including 48 per cent of children aged 3 to 5 and 90 per cent of those aged 6 to 17. Despite these apparently high levels of enrolment, some 1.5 million children were still not attending school. The numbers are particularly high in the departments of Cajamarca (31 per cent), Piura (28 per cent), Huánuco (27 per cent), Huancavelica (26 per cent) and Amazonas (24 per cent).

444. Not all enrolled children attend school regularly. The ENDES 1991-1992 findings indicate that of every 100 enrolled children aged 6 to 17, 94 attend school; many have dropped out to work and contribute to the family income, while others combine study with work. Eleven per cent neither study nor work, and these are the high-risk children.

445. Ninety-six per cent of children aged 6 to 17 have completed some primary grades; naturally, children in urban areas reach higher grade levels, and there is no perceptible difference between boys and girls.

446. Children are expected to have completed primary education by the age of 14. At the national level, children of that age have succeeded in passing an average seven grades of study, with a one-grade difference between children in urban and rural areas. In the Inka, Loreto, San Martín and Libertadores Wari regions, the average child does not complete primary school.

447. Failure at school is a serious problem at the primary and secondary levels. Of every 100 primary schoolchildren, 12 repeat a year and 7 drop out; in secondary school, 9 out of every 100 repeat and 7 drop out. In absolute

terms, this means that each year 622,000 children aged between 6 and 17 repeat a year of school and 393,000 drop out. In other words, each year 1,015,000 children are failures at school; of every 100 children entering first grade, only 56 complete sixth grade.

448. The professional training of teachers and providing teaching aids are reliable means of giving our children more and better education. Even so, according to the Ministry of Education statistics, 52 per cent of primary and secondary schoolteachers have no teacher teaching diploma, although one fifth of these have completed teacher training.

449. Regarding a detailed plan of action, there is a National Plan of Action for Children (1992-1995), which has or establishes an inter-agency educational programme, the main objectives of which are:

(i) To expand educational services by 99.5 per cent, giving priority to children up to 14 in rural areas, marginal urban areas and frontier areas by the year 1995. Cost (1995): 341,549,777 new soles. Executing agency: Directorate-General for Early and Special Education, Directorate-General for Primary and Secondary Education, regional and local governments. Strategy: Reorientation of the education system, universalization of early and primary education.

(ii) To reduce illiteracy rates through literacy and post-literacy programmes based on productivity-oriented education and giving priority attention to women aged 15 and over. Cost (1995): 14,061,680 new soles. Executing agency: Ministry of Education, National Literacy Office, regional and local governments. Strategy: Joint undertaking with the national teaching corps, local and regional governments; support for the media.

(iii) To improve the quality of education, with emphasis on meeting basic learning needs, developing new curricula for the current year, linking early education with primary education, and developing new learning strategies. Cost (1995): 177,867,595 new soles. Executing agency: Directorate-General for Early and Special Education, Directorate-General for Primary and Secondary Education, and local and regional governments. Strategy: Reformulation of the curriculum structures for early and primary education; Complementarity between the different sectors to define curriculum policies and the curricula themselves.

(iv) To raise the promotion rate; cut the repetition rate; cut the drop-out rate; and develop the teaching corps. Cost (1995): 46,637,652 new soles. Executing agency: Directorate-General for Primary and Secondary Education; Ministry of Education; regional and local governments.

Primary school improvement programme

450. This nationwide primary-school improvement programme, to be executed over a five-year period, will have $300 million available for financing. When President Alberto Fujimori announced the programme, he said that the

World Bank would grant Peru a $144 million loan and that the remaining $156 million would be paid by the Treasury.

451. The World Bank loan will be used largely for building schools all over the country while the national counterpart will be used for training and the purchase of teaching materials.

Article 15

452. Peruvians have a very explicit and broad legal guarantee that their fundamental rights will be respected by virtue of article 1 of the 1993 Constitution, which states that "The protection of the human person and respect for his dignity are the supreme goal of society and the State". The Constitution provides citizens with the strongest possible assurance that they can live in freedom, peace and security.

453. The International Covenant on Civil and Political Rights, the American Convention on Human Rights (Pact of San José) - two international instruments that have been constitutionally signed and ratified by our country, together with the National Human Rights Council responsible for promoting, coordinating and advising the Executive on the complete protection and realization of fundamental human rights, add to the security provided by the Constitution and give citizens every confidence that they can truly enjoy the free exercise of their rights in the various aspects of individual, social and cultural life.

454. Article 2, paragraph 8, of the Constitution clearly states that everyone is entitled to freedom of intellectual, artistic, technical and scientific creation, and to ownership of such creation and the proceeds thereof. The State encourages access to culture and assists its development and dissemination. As we have seen, the State encourages the promotion of cultural development and popular participation in cultural life. The last paragraph of article 14 states that the mass media must cooperate with the State in education and in moral and cultural training.

455. All the media are in fact a part of society's resources and of the scientific heritage of mankind. They are therefore fundamental components of universal culture, as stated in the Declaration of San José, approved by the Intergovernmental Conference on Communication Policies in Latin America and the Caribbean, held in Costa Rica (12-16 June 1976). This Declaration contains valuable concepts which may usefully be quoted in the context of article 15 of the Covenant. For example:

> "That man has a vital need to express himself and that therefore his free and spontaneous right to establish relations within his own community should be guaranteed."
>
> "That access to the entire range of cultural resources and the free and democratic participation of all men in the diverse manifestations of the spirit is a human right."
>
> "That there are sectors of the population which have yet to emerge from the isolation in which they live and be helped to communicate with one another and to be informed about national and worldwide affairs."

"That national communication policies should be conceived in the context of national realities, free expression of thought and respect for individual and social rights."

"That [States] should ... encourage individuals and peoples to become aware of their present and future responsibilities and their capacity for autonomy, by multiplying opportunities for dialogue and community mobilization."

456. It follows from the above that the media are part of the nation's scientific heritage, some of them coming under public law and others under social law. It also follows that access to the media should be effective and real in order to allow for an authentic, free flow of information, and so free and democratic participation is required.

457. The State promotes access to culture and its dissemination by exempting educational establishments from any kind of tax, as stipulated in article 19 of the Constitution, under which universities, institutions of higher learning and other educational establishments set up in conformity with the relevant legislation are free of any direct and indirect taxation of assets, activities and services related to their educational and cultural purpose.

458. Culture is not only the greatest social and historical expression of the spirit; it is also the first of all human rights. Man must first be a person and acquire education and learning before he can really enjoy the right to a decent standard of living, property, paid work and so forth.

Cultural heritage

459. The conservation of the cultural heritage does not mean simply preserving intact a body of material wealth. Nor does it mean, as some conservationist or traditionalist schools argue, preserving a "phase of cultural development" by halting a process at a particular point in time, in pursuit of a cultural ideal which has been superseded (which amounts to ensuring that a given social structure will continue).

460. Conservation signifies a need to conserve those elements which enable the social group to continue relatively coherent evolution and development because it possesses a clear self-image. Conservation of a cultural identity does not mean keeping it unchanged, but preserving a coherent unity throughout all the possible changes sought or imposed.

461. In this respect, conservation of the cultural heritage means safeguarding those elements which help to preserve a group's cohesion while it undergoes the necessary transformations, without losing sight of those valuable factors constituted by the historical process and which provide useful elements for the future.

Plundering and its consequences

462. This is one of the most serious problems we face; as a general rule, the less a site has been disturbed, the more information it can provide.

Not only will more objects have been preserved but there will probably be less mixing of cultural artefacts, which is also important.

463. Over time societies have left behind vestiges of their culture (archaeological material) which have been deposited consecutively and chronologically in layers. Detailed study of these remains allows archaeologists to gain an idea of the nature of the societies concerned. However, archaeologists face two kinds of problem in ensuring the preservation of archaeological contexts:

Natural (ecological forces);

Cultural (human activities, the foremost of which is plundering).

Strictly speaking, plundering means the destruction or profanation of Indian burial grounds; there are a number of reasons why this occurs in Peru.

464. Traditionally, some communities feel a bond with the burial grounds and see nothing wrong in extracting and using their remains. In some cases, when farming activities come to an end, the peasants plunder burial grounds and sell archaeological artefacts to supplement their income. They are encouraged by the demand for such artefacts in the cities.

465. This practice merely causes the destruction of archaeological sites, leading to the loss of precious information that would help us to understand how our forebears successfully confronted and mastered one of the world's most wild and inhospitable geographical areas.

466. For these reasons, the following measures have been adopted to preserve and conserve the cultural heritage.

The nation's heritage is the responsibility of all citizens

467. Article 21 of Peru's 1993 Constitution expressly declares archaeological deposits and remains, structures, sites, bibliographic documents and archives, works of art and historical artefacts to be cultural assets. Items presumed as such provisionally belong to the nation's cultural heritage, regardless of whether they are publicly or privately owned, and are protected by the State. The law protects their ownership.

Offences against the cultural heritage

468. In accordance with Title VIII of the Penal Code (Legislative Decree No. 635), anyone who pillages or, without authorization, explores, excavates or removes pre-Columbian archaeological remains is liable to a penalty of three to six years' imprisonment and 120 to 365 days' fine (art. 226).

469. In addition, anyone who promotes, organizes, finances or directs groups of individuals for the purpose of committing the offences provided for in article 226 (i.e. pillaging, exploring, excavating or removing pre-Columbian archaeological remains) is liable to a penalty of three to eight years' imprisonment and 180 to 365 days' fine (art. 227).

470. Anyone who exports from Peru items belonging to the pre-Columbian cultural heritage or fails to return them as required by the permit issued to him is liable to a penalty of three to eight years' imprisonment and 180 to 365 days' fine (art. 228).

471. Anyone who destroys, damages or exports from Peru any items other than those belonging to pre-Columbian period that have previously been declared cultural assets shall be liable to a penalty of two to five years' imprisonment and 90 to 180 days' fine (art. 230).

472. The penalties laid down in this chapter of the Penal Code apply without prejudice to seizure by the State of the material, equipment and vehicles used to commit the offences against the cultural heritage, and of the cultural assets improperly acquired (art. 231).

General Act relating to the Protection of the Nation's Cultural Heritage (Act. No. 24,047 of 8 January 1985)

473. Article 1 of this Act states that the nation's cultural heritage is under the protection of the national community, whose members are required to cooperate in its conservation.

474. The nation's cultural heritage comprises those cultural assets that testify to man's creative activity, whether material or immaterial, and which have been expressly declared as such on account of their artistic, scientific, historical or technical significance.

475. The same declaration may be made in respect of areas of natural beauty.

476. The following are presumed to be cultural assets: State-owned and privately owned movable and immovable property from the pre-Columbian and Viceregal periods, and property from the Republican period that possesses the significance referred to above. Regardless of who owns the assets in question, they correspond to those listed in articles 1 and 4 of the 1972 UNESCO Convention and articles 1 and 2 of the 1976 Convention of San Salvador.

477. The items' presumed status is confirmed by the formal declaration and identification made at the request of the interested party by the competent State body regarding their cultural nature, as distinct from certification of their non-cultural nature by the same body (art. 2).

Cultural assets

478. Immovable cultural assets include buildings, infrastructure works, environmental works, monuments and other structures, together with the accumulated remains deriving from human life and activity, whether urban or rural, regardless of their diverse antiquity and purpose, which possess archaeological, artistic, scientific, historical or technical value.

479. The protection of immovable cultural assets extends to the soil and subsoil where they are situated or found, the airspace above them and the surrounding area to the extent technically necessary in each case. The

assets are subject to the restrictions laid down by this Act and to such regulations and technical provisions as are required in the national interest.

State-owned property

480. State-owned property consists of immovable pre-Columbian cultural assets of an archaeological nature which have been or may be discovered. They are imprescriptible and inalienable. Any privately-owned land on which such assets are is located remains private, without prejudice to the State's right to expropriate it.

481. Places of worship, houses and other structures belonging to the State or to private individuals which have been built above archaeological remains constitute a single immovable asset of a private nature, without prejudice to the State's right to expropriate it if desirable and necessary for its conservation and restoration.

The system of protection of the cultural heritage

482. The Peruvian National Library and the National Archives are responsible for protecting and declaring the bibliographic and documentary heritage respectively.

483. The National Cultural Institute is responsible for protecting and declaring the cultural, archaeological, historical and artistic heritage, and also expressions of Peru's culture and traditions (art. 6).

484. The Peruvian National Library, the National Archives and the National Cultural Institute are responsible for identifying, regulating, preserving, safeguarding, examining and disseminating Peru's cultural heritage within their spheres of competence (art. 7).

485. For the purposes of conserving archaeological and historical monuments within their jurisdiction, the provincial municipalities are required to comply with the regulations issued by the National Cultural Institute. This requirement also applies to the competent regional bodies as and when they are established by law. The departmental development corporations will provide the municipalities with financial assistance in performing their conservation role (art. 11).

486. Movable assets that form part of the nation's cultural heritage may not be exported from the national territory without a permit issued through a Supreme Decision, which is required when they are to be exhibited for scientific, artistic and cultural purposes or for research or specialized restoration work, subject to prior appraisal by the specified bodies. They may be exported for a period of not more than one year, which may be extended to two. Items for which a permit has been issued will be covered by a comprehensive insurance policy in the name of the State and will be under the protection of the Peruvian diplomatic representative in the country concerned (art. 13).

487. Cultural assets owned by the Church or other religious associations are primarily used for worship, regardless of their status as cultural assets,

which obliges their owners to conserve them in an appropriate manner. The State guarantees such assets and ensures their conservation by means of technical assistance agreements and risk insurance in the case of public exhibitions (art. 15).

Education and publicity

488. In conjunction with the National Library, the National Archives, the National Cultural Institute and other cultural bodies, the Ministry of Education is required to ensure that Peruvian society is aware of and appreciates the value and significance of the national cultural heritage as the foundation and expression of our national identity. The mass media are required to encourage and develop respect for the national cultural heritage (art. 16).

National environmental legislation and policy

489. The need to adopt an integrated approach to resolving environmental conflicts and disturbances has led to the adoption of the Bill establishing the National Environment Council (CONAM), an institution with ministerial rank whose function is to direct and supervise national environment policy and which will coordinate the functions performed by the various sectoral environmental authorities.

490. After many years during which Peru's environmental legislation and policy were in a state of near-neglect or disregarded on the grounds of their incompatibility with an economy in crisis, the establishment of an entity to act as an environmental authority has marked one of the most significant steps in the reform of environmental management. It will contribute to strengthening the State's institutions and will form an important part of a policy oriented towards sustainable development. Its positive repercussions will also provide a favourable framework for harnessing advanced technology at a time of commercial expansion.

Foundations for reform

491. The foundations for the long-awaited reform of environmental policy were first laid in 1990, with the promulgation of the Environment and Natural Resources Code; since then environmental protection regulations have been issued for mining, hydrocarbons, industrial, forestry and fishing activities. The Environmental Impact and Management Programme (PAMA) has also recently come into operation. All sectors of production are required to comply with the Programme in order to ensure that within a specific time-limit they introduce comprehensive technological innovations which will considerably reduce the harmful environmental impact of their operations.

Functions and conservation

492. CONAM will supervise the implementation of all these provisions and the activities of the institutions to ensure that, without overlapping, they contribute to achieving the primary objectives of equilibrium between economic development and environmental use, guaranteeing a decent quality of life and the institutionalization of environmental management. From this standpoint,

one of CONAM's first measures will be to draw up a single set of national regulations on parameters of environmental pollution, to serve as a reference for all industrial activities.

493. CONAM will be responsible for directing and assessing national environmental policy, coordinating actions in this sphere by ministries and regional and local governments, promoting international cooperation, establishing guidelines for environmental impact studies, recommending suitable development of the nation's natural heritage and, in the last resort, solving problems deriving from the use of the environment and resources.

494. Because of their global nature, environmental problems require that an institution such as CONAM should possess broad political and administrative authority, in conjunction with a multisectoral and multidisciplinary structure, and permit broad participation, including that of the public, who are the most seriously affected by pollution. CONAM is structured with this aim in mind.

495. Its Board of Directors will comprise members appointed by the Executive (including representatives of sectors linked to industry and the community) and by municipalities, the universities and the business sector. The Executive Secretariat, the technical organ, will comprise environmental specialists (who may include representatives of environmental NGOs). The Consultative Commission, the advisory organ, will be composed of specialists appointed by the public and private sectors.

Potential

496. CONAM is not merely intended to act as a first line of defence against the disease of environmentally destructive economic growth. Those countries which possess national ministries or secretariats for the environment are demonstrating that it is possible to plan economic progress while preserving the environment, and that without such institutions it is impossible to resolve the conflicts created by environmental decay.

497. The dramatic characteristics of environmental deterioration are not the only reason for establishing such an institution. Its establishment is compatible with the commitments made by Peru at the 1992 Earth Summit in Brazil, and with the efforts required if Peru is to comply with the global agreements into which it has entered, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the United Nations Framework Convention on Climate Change and the Framework Convention on the Conservation of Biological Diversity.

498. However, one of the most important reasons for the founding of CONAM is Peru's vast natural wealth, which ranks Peru among the five countries with the greatest biological diversity in the world. Peru's status obliges it to play a leading role in protecting ecosystems and offers it an opportunity to take advantage of its position in order to attract international resources for the environment and development.

General policy provisions for conservation in the fisheries sector

499. Through the Ministry of Fisheries, the Government has reasserted its determination to promote and guarantee the activities of this sector, in harmony with the preservation of the environment. To this end, it has incorporated the general policy provisions for environmental protection.

500. Companies currently operating in the fisheries sector are accordingly required to submit an environmental impact and management programme, in conformity with the guidelines set out in Ministerial Decision No. 177-94-PE.

501. The Ministry of Fisheries, which is the relevant sectoral authority, has opened a register of institutions specializing in environmental impact studies and established an ad hoc committee to evaluate and approve these studies. Consequently, fishing companies which fail to comply with the established provisions will incur heavy penalties, in conformity with the regulations of the current General Fisheries Act and other legal provisions in force relating to the environment.

502. The Peruvian fishmeal industry has been in operation for over 40 years, and even at its peak, when Peru was the world's leading producer with an output of 12 million tonnes of processed raw material, it was not responsible for the pollution levels of which it is accused by those who have an interest in vilifying Peru's fishing industry.

Ecology and environment (summary of legislation)

503. It follows from the above that we consider ecology to be the custodian of nature and of the environment, in keeping with the principles of biological sustainability.

504. The role of the law is to protect life, in conformity with the obligation laid down by article 2, paragraph 22, of the Constitution, which recognizes the right to enjoy a balanced environment appropriate for the development of life.

505. This provision, like the former provision of article 123 of the 1979 Constitution, stipulates that the following assets are protected:

(i) A healthy environment;

(ii) The development of life;

(iii) Nature.

506. Accordingly, the State is required to prevent environmental pollution and to require, in conformity with article 8 of the Environment Code, the mandatory environmental impact studies for any economic activity, as specified below.

507. In short, life, the conservation of natural resources and efforts to combat environmental pollution are the basic foundations of ecological legislation.

508. Article 1 of the Environment and Natural Resources Code, which, it should be explained, was adopted within the framework of the 1979 Constitution, regulates article 123 of the Constitution and classifies environmental rights as inalienable. In addition, the Code extends to all the duty to contribute to preserving an environment that is beneficial for the development of life.

509. The relevant articles of the 1993 Constitution are articles 66 to 69. In conformity with these articles, the environment and natural resources are jointly recognized as being the common heritage of the nation and contributing to the public interest. They may accordingly be invoked on grounds of public need and utility.

510. In procedural terms, the right of all persons to institute legal proceedings to ensure the preservation of protected assets is recognized, regardless of whether the applicant or complainant has an economic interest. It is sufficient for him to have a moral interest, even if he or his family is not directly affected since the right to a healthy environment affects the life of society as a whole and its protection is thus the responsibility of all society's members. The public right of action may also be exercised.

511. The primordial importance of these principles is enshrined in the Universal Declaration of Human Rights, article 3 of which guarantees the right to life.

Agro-ecology

512. The notion of agriculture linked to ecology is termed agro-ecology, or organic agriculture, biodynamic agriculture or crop ecology; it can be summarized as agriculture with an ecological focus. It calls on the biological sciences, with the assistance of the agrosystem and the ecosystem.

513. The ecosystem signifies the unified study of the physical elements of the environment: climate, soil, geology, etc. The ecosystem also encompasses all the species occupying a given area and the interactions between its living and non-living components.

514. The agrosystem is the result of human modification of the natural ecosystems, which man basically alters to provide fields for crops and grazing. The agrosystem is of enormous importance, as virtually one third of the Earth's land area is currently under cultivation or used for grazing. The agrosystem is thus an ecosystem that has been altered by man through the input of certain human effort (known as benefit).

515. Decree-Law No. 21,147 creates important conservation areas which are inviolable; in other words, their ecosystem may not be altered. They are the national parks, the national reserves, the national sanctuaries and the historic sanctuaries.

National parks

516. Their purpose is to protect wild flora and fauna, to offer the beauty of their landscape and to preserve species from extinction.

National reserves

517. The national reserves are intended to protect wild fauna, whose biodiversity is of national interest; they include the Paracas and Pampa Galeras reserves in the Libertadores Wari region.

National sanctuaries

518. The national sanctuaries offer protection for varieties of plants or a community of a particular animal species. Examples are the Tumbes sanctuary for mangroves, shellfish and the black crocodile. They also include natural formations of scientific and aesthetic interest.

Historic sanctuaries

519. The historic sanctuaries protect the natural settings in which illustrious events of Peruvian history took place. They include the Pampas de Junín and La Quinua in Ayacucho. The former Punchauca estate in Carabayllo (Lima) also falls into this category. Under Decree-Law No. 21,147, all these inviolable areas must be used without causing degradation and not for mere economic advantage.

520. When any of the rights vested in the nation in respect of natural resources is violated, judicial protection and consideration are the responsibility of the specialized agrarian courts, in conformity with Decree-Law No. 21,147. In conformity with article 130 of the Environment Code, administrative responsibility has been delegated to the Office of the Comptroller-General. This article stipulates that responsibility for the protection of the environment and natural resources shall be assigned so as to ensure strict compliance with the Code throughout the territory of the Republic.

521. It would have been more consistent with the 1979 Constitution to establish a ministry of the environment, as in Brazil and Colombia, with which Peru shares the Amazon region. The current Constitution (1993) has established the National Commission for Environmental Management (an interministerial body). It should be borne in mind that article 159, paragraph 4, of the former Constitution expressly stipulated that the ecological equilibrium of the Amazon region should be preserved in the interest of developing its agricultural potential.